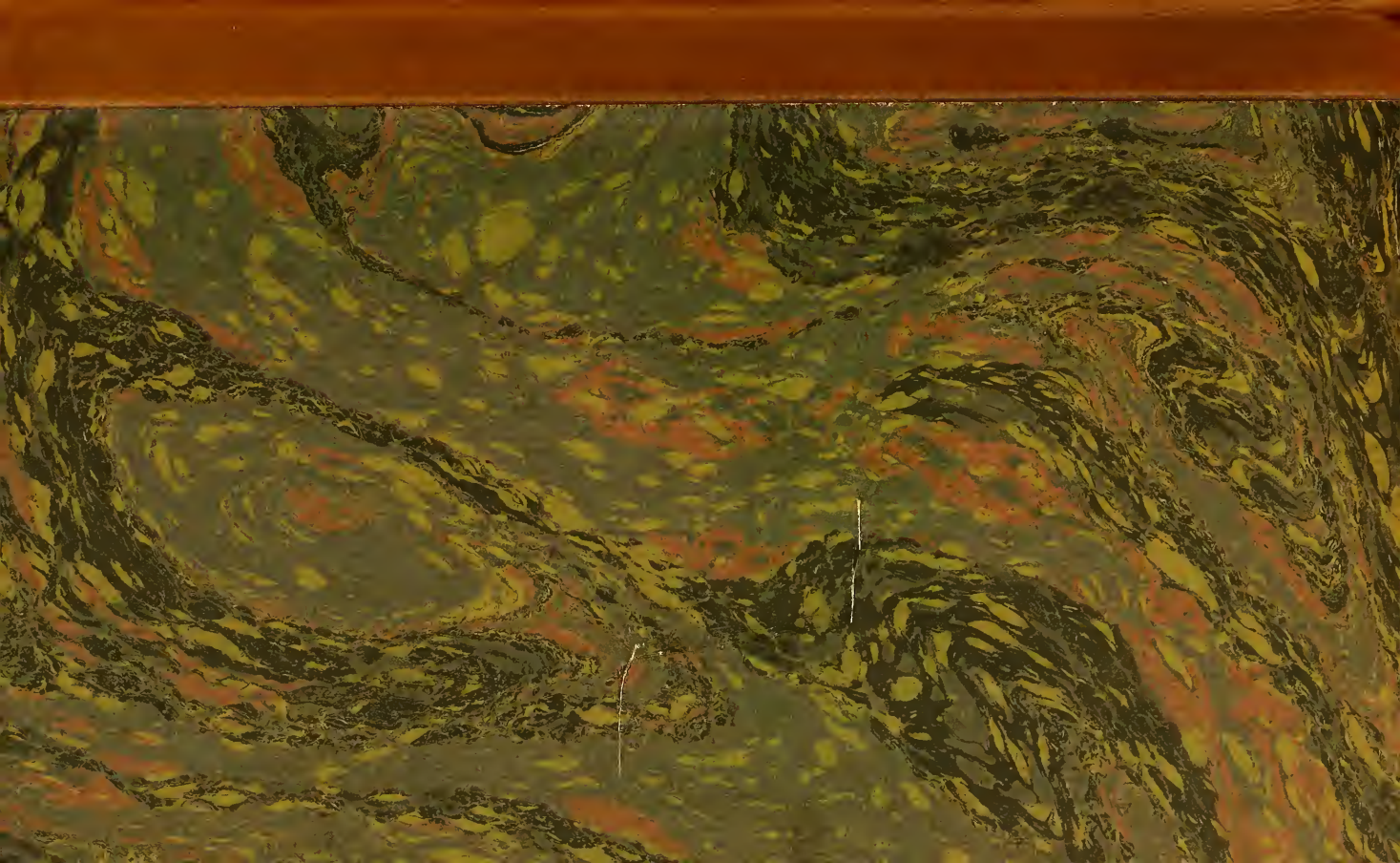

Books Printed for T. Waller *in the* Temple Cloyſters.

Vernon's Reports in Chancery, 2 Volumes.

Danvers's General Abridgment of the Common Law, 3 Vol.

Moor's Reports, in the Time of *Charles* the 2d.

Palmer's Reports, in the Time of *Charles* the 2d.

Fitz-Gibbon's Reports, in the Time of *George* the 2d.

Hobart's Reports, in the Time of King *Charles*.

Nelſon's Lex Maneriorum, or the Laws and Cuſtoms of *England*.

Nelſon's Office and Authority of a Juſtice of Peace, 2 Volumes.

Tenants Law, or the Laws concerning Landlords, Tenants and Farmers.

The New Retorna Brevium.

Lex Conſtitutionis, or the Gentleman's Law.

Officium Clerici Pacis.

Lutwych's Reports, 2 Volumes; and all other Law Books at the loweſt Price.

John Adams.

AN Historical View OF THE COURT OF Exchequer,

And of the KING'S REVENUES, there answered.

By a late Learned Judge.

In the SAVOY:
Printed by E. and R. NUTT, and R. GOSLING, (Assigns of *Edward Sayer* Esq;) for T. Waller in the *Temple Cloysters*. M.DCC.XXXVIII.

THE

PREFACE.

IT is a Practice too frequent, as well with Editors as Authors, in their Prefatory Diſcourſes to anticipate the Judgment of the Publick, by giving their own Sentiments, which ſeldom are founded on a Deliberate and Impartial Examination of the

Work; but on the contrary arise from Partiality and Self-Interest; and tho' such a Conduct seldom fails to incur Publick Censure, which it most certainly deserves; yet it is not so great an Affront, as affixing Learn'd Names to a Title Page with an Intent to deceive the Publick; for these Reasons the following Sheets, which are supposed to be the Performance

of

of a late Learn'd Judge, muſt appear in Publick unrecommended by any Name, and ſtand or fall by their own Merit. The whole that ſeems to be intended by the Author, is a Conciſe and Methodical Account of the antient Tenures, and out of them to ſhew the Riſe of Legal Juriſdiction, and principally of the Court of *Exchequer*, which was the firſt Great Court

of Legal Proceedings, with the different Branches of Buſineſs incidental to it, particularly the King's Revenues.

THE

THE CONTENTS OF THE Several CHAPTERS

CHAP. I.

CHAP. II.

CHAP. V.

CHAP. VI.

CHAP.

CHAP. X.

AN Hiſtorical View OF THE COURT OF EXCHEQUER.

CHAP. I.

Of the King's antient Revenues in General, and incidently of his great Councils, &c.

THE *Exchequer* was the ancient and ſovereign Court in *Normandy*, to which they appealed from all inferior Juriſdictions, it being the grand Court of the Dukes there. Cuſtumier de Normandy, fol. 102, and fol. 61, 62.

Basn. Tit. Juris, fo. 20.

There is very great Difference amongst the Antiquaries touching the Name. *Basnage*, in his Customs of *Normandy*, derives the Word (*Exchequer*) from the *German* Word *Skecken*, which signifies to send; because the Court was composed *de Missis in Dominico*, or of such great Lords as were particularly sent for to hold Court with the Seneschal or Steward on any Occasion.

Maddox 109. Spel. Gloss. Tit. Scac'.

The common Derivation of the Word *Exchequer* is from a chequered Board, on which they play at *Chess*, and hence a *Chequer*, because in that Game they give *Cheque*; and the Court was so called because they laid a Cloth of that Kind upon the Table, upon which the Accountants told the King's Money, and set forth their Accounts in the same artificial Manner, as in the Cofferers Account is done at this Day.

1 Godf. 228. Terraine 50, 60, 61.

This Court, in *Normandy*, was the sovereign Jurisdiction and Superintendent of all Manner of Complaints from

from the Bailiffs or Sheriffs; for the Bailiffs or Sheriffs exercised the ordinary Jurisdiction in each Bailiwick through the whole Dutchy of *Normandy*; their Duty was to gather the Duke's Rents in each Bailiwick, and to account for the same in this great Court; here likewise they heard all Manner of Complaints against them, and the Sentences here were final.

This Court was composed of such Barons, Bishops and Abbots, as held immediately of the Duke, and were occasionally sent for to attend the Prince, and they were called in by a Summons to attend the Duke's Pleasure, and such as were called attended the Duke's Steward in taking an Account of the Bailiffs, and hearing Complaints against them.

Basn. 23. See Maddox Hist. 5, 6. the Constituents of the *Aula Regis*, or K.'s Court, Temp. W. 1. & W. 2.

Terraine says, there were two Sorts of Jurisdictions, the *Fieffal* and *Bailie*.

The *Fieffal* is the feudal Jurisdiction, by the Reason of the Fiefs, that is, where the feudal Lord had Power to do Right to his Tenants upon any

Complaint or Quarrel, and this reached as far as the Bounds and Extent of the Manor, and to all Quarrels that were moved between the Resiants there.

The Jurisdiction *Bailie* is well defined by *Terraine.*

This was the ordinary Jurisdiction, which from the *Bailees* in *Normandy* was here delivered over to the Sheriff in every County, which thence was called his Bailywick.

Terraine 59, 60.

The Office of Bailie, as defined, is he that is called the Justiciar of the County, and was established by the Prince or Duke there, to do Justice and Right to the People that were submitted to him, to *guard* the Peace, to decide all Quarrels, destroy Rogues, Homicides, the Burners of Houses and other Malefactors, to *guard* the Rents of the Duke, and to get them in, and deliver back the Pledges that were taken by wrong, and to remove Force, *&c.*

It is plain by this Description, that the *Bailee*, or Bailiff and Sheriff were

Terraine 48. Ancient customiere (56. fo. 47.)

an

anciently the same Officer, and that the Sheriff originally had the ordinary Jurisdiction within the County or Bailywick, though afterwards they appointed Lieutenants and Bailiffs of Counties distinct from the Sheriff; but certain it is, that the highest Justices were those that they called the Masters of the *Exchequer*, and who are now at this Day called the Presidents and Counsellors of the Court of Parliament, and to them it appertained to amend what the Bailiffs or lesser Justices had misdone, and to call in all Things that were withheld from the Prince.

The Sheriff is the King's Bailiff for collecting and answering the K.'s Revenue. See Hale of Sher. Acc. 48, &c.

Yet it is to be doubted, whether the *Exchequer* in *Normandy* was formed from the *Exchequer* in *England*, or *England's* from that of *Normandy*; certain it is, that they are very like one unto the other; all the great Ministers, as the Justiciar, Constable, Seneschal, Chancellor and Treasurer, sat in this Court, and such other Barons as were *occasionally* resident *or sent* for; but as here the greatest Part of the Ba-

ronage was summoned to Parliament, which was the most eminent Court, so some few were summoned to the *Exchequer*, which was the Court for the private Concern of the Crown; and *therein* the Matters of the Crown Revenue were first dispatched; then all the Complaints were heard against the Crown Officers, which was the Original of the Writs of false Judgment; but this was afterwards turned into another Channel, for the Complainants against the Officers were so many and so great, and the Profits arising by Suits of Law began to encrease so much, that they confined the ordinary Jurisdiction of the Sheriff to the Sum of forty Shillings; and wheresoever it was above that Sum, they were obliged to take out the King's Writ, either returnable before his own Justiciar in Court, or they took out a *Justicies*, returnable before the ordinary Jurisdiction in the County, and a Fine was paid for the Original, according to the Value of the Thing in Demand, and

This respects Normandy as well as England.

in

in that Proportion the Amerciament was set at the Judgment; and hence it was that the Sheriff could proceed upon a *Justicies*, although the Sum was more than forty Shillings. Fitz. Fines and Amerciaments 87, 88. and Bro. Amerciam. 43.

Towards the latter End of the *Norman* Period the Power of the Justiciar was broken, so that the *Aula Regis*, which was before one great Court, where the *Justiciar* presided, was divided into four distinct Courts, *i. e.* the Courts of *Chancery* and the *Exchequer*, the Courts of *King's Bench* and *Common Pleas*. Madd. 2. 4.

The Court of *Chancery* issued all Originals, whether in Relation to the Revenue, or to civil Justice; for the Chancellor, before the Breaking the Courts into distinct Jurisdictions, had the Custody of the Seal, and therefore issued all Originals returnable before the Justiciar.

Afterwards, when the Jurisdictions were distinguished, the Originals relating to civil Pleas were returnable before the Justices of the *Common Pleas*;

but the Originals in Trespass might be returnable into either Court, because the Plea was criminal as well as civil.

But the *King's Bench* themselves made out the Process in criminal Matters, for in this they shared with the Power of the *Chancery*, though the *Chancery* continued to be the Foot and Basis of the civil Jurisdiction; but the criminal Jurisdiction was returned *coram Rege*, and not *coram Justiciariis de Banco*.

The Chancellor put the King's Seal to all Patents, which was the Foundation and Basis of the Revenue; but when any such Patents were sealed, they were estreated into the *Exchequer*, and the Execution issued out of the Court of *Exchequer* for all the Reservations on such Patents; for as the *Chancery* was a Cheque upon the civil Justice by issuing Originals, so likewise it kept the *Foot* and Foundation of all certain Revenues of the Crown, which was estreated into the *Exchequer*,

See Madd. 111. a noted Instance of a L. Chancellor's accounting in the Exchequer, Temp. H. 2.

quer, in Order to be there gathered and paid in.

Likewiſe all Fines upon Crimes in the Court of *King*'s *Bench* were to be eſtreated into the *Exchequer*, in Order to levy ſuch Fines there, or if they were already levied, they were yet to be eſtreated, in Order that the Clerk of the Crown might account for ſuch Fines ſo received in the Court of *Exchequer*.

For on the criminal Side, if the Parties were in Court, they might commit them for ſuch Fines, ſince their Bodies were liable; and ſo if abſent, they might Iſſue a *Capias* to bring in their Bodies to anſwer the Fine; for on the criminal Side, the Bodies of Offenders being in Court, or being preſumed to be out on good Bail, in Order to anſwer to ſuch Fines as ſhould be ſet upon their Offences, the *King*'s *Bench* had Juriſdiction over the Body, in Order to get in ſuch Fine, becauſe the Body was in Court, or a Surety to bring in the

Body; and if ſuch Fines were anſwered by the Court, they were to be totted by the Clerk of the Crown in the Eſtreats; but where they were not received by the Clerk of the Crown, they were to go in Proceſs in Manner hereafter mentioned.

See Madd. 11. As long as the Power of the *Juſticiar* continued, the *Aula Regis* was one Court, and only diſtinguiſhed by ſeveral Offices; for all the Offices were united under the *Juſticiar*, and he was the Governor and Superintendent of the Courts; but from their Experience of what had been done in *France*, they thought it proper towards the End of the Barons Wars to lay aſide the *Juſticiar*; for in *France*, *Peppin* and *Hugh Capet* (who were both *Juſticiars*) by the mighty Power they acquired by their Superintendance at Court, got into the Throne, and diſplaced the Poſſeſſors thereof.

In *England*, when they had laid aſide the *Juſticiars*, the ſeveral Offices were

were by *Ed.* 1. broke into distinct Courts, and the great Officers were so placed as to be a Cheque one upon the other; therefore the Chancellor made out the Original Writs, and the Justices of the Bench proceeded thereon to Justice and Execution, so that the *Chancery* was a Controul upon the *Common Pleas*, and likewise upon the Justices in Eyre, for they could proceed no farther than the King's Writ gave them an Authority.

Indeed the *King's Bench* had the Sovereign Jurisdiction in criminal Matters, but that was ambulatory with the King, and had no Cheque nor Controul but from the King himself, for the only Controul of Justice was the Mercy of the King, but in all foreign Counties there was no original Jurisdiction of the *King's Bench*, but there were Justices in Eyre appointed; and afterwards Commissioners of *Oyer* and *Terminer*, and general Gaol-Delivery, to dispatch the Business in all foreign Counties, so that on the criminal

Note; Justices in Eyre were first appointed 22 H. 2. See Madd. 13, &c. and Dugd. Chron. Series, p. 3.

minal Side there could be no Cheque nor Controul but the King himself; but in the Matters of the Revenue the Chancellor and Treasurer had the Cheque and Controul upon one another, for the Chancellor was appointed to make out all Grants and Patents for Lands and Tenements; for no real Estate of Land was to be parted with by the Crown without the great Seal; but then the Rents of such Tenures were to be accounted for before the Treasurer; and so he by Patent was to grant all real Offices, but such Officers were Accountants at the Court of *Exchequer*. And the same Sort of Cheque was created by *Ed.* 1. in the Court of *Parliament*, for the *House of Commons* was designed as a Cheque to the Power of the Lords.

ADDENDUM.

Note; It appears from King *John*'s Charter, and many other undoubted Authorities, That the Commons were

a conſtituent Part of the Parliament of *England*, ſeparate from the Lords long before *Edward* the 1ſt's Time. King *John*'s Charter runs thus, *Eſcuage* (or Aid to the King) ſhall be Taxed as formerly, (*i. e.* by Parliament). No *Eſcuage* (or Aid) ſhall be ſet, except for redeeming the King's Perſon, making his eldeſt Son a Knight, and *one* Marriage of his eldeſt Daughter; and for this there ſhall be only reaſonable Aid, and in like Manner ſhall the Aids of the City of *London* be; and for the aſſeſſing (*i. e.* granting) of *Eſcuage*, we will ſummon the Archbiſhops, Biſhops, Abbots, Earls and greater Barons of the Kingdom, ſpecially by our ſeveral Writs: (This conſtituted the Houſe of *Lords*, and then for the *Commons* it follows thus;) And we will cauſe to be ſummoned in general by our ſheriffs and Bailiffs, all other our Tenants *in Capite*, (*i. e.* to grant and aſſeſs thoſe Aids in a Free Parliament,) To meet at a certain Day after 40 Days at leaſt, at a certain

See Bacon of Government, lib. 1. p. 277. and the Preface or Concluſion of l. 2.

certain Place, and we will set down the Cause (of such Summons) in all our Writs; and the Matter at the Day appointed shall proceed according to the Counsel of those (Lords and Commons) that shall be present, although all that were summoned do not come; and we will not that any Man take Aid of his Freemen, unless for Redemption of his Body, making his eldest Son a Knight, and *one* Marriage for his eldest Daughter, and this shall be a reasonable Aid only.

Note; the Commons the King's Councellors as well as the Lords.

And Note; This Charter of King *John*, was in Effect only a Revival of a former Charter of King *H.* 1. whereby he restored the Confessor's Laws and the old *Saxon* Liberties, which permitted no Freeman to be taxed or tallaged without his own Consent. See *Matt. Paris*, *Annis* 1214, 1215. and the Stat. 25 *E.* 1. *c.* 6. 34 *E.* 1. *c.* 1. *Westm.* 1. *c.* 36, *&c.*

CHAP.

CHAP. II.

Of Ancient Demeans, *and* Tenures *per Baroniam, &c.*

TO underſtand the Revenue and Buſineſs of the ancient *Exchequer*, it is neceſſary to conſider that the principal Regal Revenue anciently aroſe from the Lands and Tenements granted by the King, and they were either *Terræ Dominicales*, the Demeſne Lands, and are ſo mention'd in *Domeſday Book*, under the Title of *Terræ Regis*; the Tenants whereof were anciently to maintain the King's Table, and had their Reſidence on, and Living out of the King's Lands, rendring their Corn, Sheep, Oxen, and other Produce of the Land itſelf to the King; but becauſe this was cumberſome to deliver in Specie, they came afterwards to another Method, which was by Aſſeſſment of thoſe Demeſn Lands,

See Hale of Sheriffs Accounts, p. 31. and Gervas de Tilbury there cited.

according to the Value and Produce thereof, and the King's Neceſſities, and this *Tallage* was ſettled by Juſtices, who went by the King's Orders and overlooked ſuch Lands, and made the Aſſeſſment, and therefore the Title is *de Tallagio Dominicorum Regis per Galfridum de Luci & Socios ſuos*; frequent Examples of this are to be met with in *Maddox* 483-4-5.

Theſe Tenants being the King's Villeins were thus taxable by the K.'s Juſtices; but otherwiſe were free from all Suit and Service to any Court whatſoever except their own; that ſo they might mind the Buſineſs of the King's Husbandry, and be the better able to ſupply the King; theſe Supplies when paid in Money, were called Gifts, *Dona Aſſizæ*, *Redditus Aſſizæ*, *&c.* but moſt frequently *Tallagium*, and were of two Sorts, *viz.*

See Hale's of Sheriffs Accounts, 38, 39, &c.

Firſt, What were gathered by the Sheriff; and ſecondly, ſuch as were gathered by other great Perſons, that had many of them in their own Hands,

and

and therefore paid them themſelves into the *Exchequer*; and theſe receiv'd the Acquittances, ſuch were the Tallages of the Cities, who appeared in the *Exchequer*, and accounted in Perſon.

See Madd. Firmæ Burgorum *per totum*.

But the other Manors that were diſperſed in the Countries, and as it appears by *Maddox* 519, were accounted for by the Sheriffs; for none were tallaged (*i. e.* taxed by the King or his Juſtices) but *Ancient Demeſnes*, and *Burroughs holding of the Crown.* Madd. 520.

Poſt. 27.

Theſe made up the *firmæ Majores*, *& firmæ Minores*, that were after the Time of *Ed.* I. accounted for by the Sheriffs, and in Proceſs of Time they made a Bargain at the *Exchequer*, to account with the King for a certain Rent, (inſtead of the Tallages, which were in a Manner arbitrary,) and then they were never taxed by Parliament, but for the 10th and 15th of their Perſonal Eſtates; but they anſwered their Rents at the Receipt of the *Exche-*

quer, that were particularly charged upon them, or elſe anſwered them to the Sheriff; if they anſwered to the Sheriff, he took and totted them; if to the *Exchequer*, they had a Receipt from the *Exchequer* Chamberlains, and afterwards ſigned by the Auditor General, when that Office was erected: The Sheriff was upon his Account, and ſhewed the Book of the Clerk of the Pells in his Diſcharge; the Summons of the Pipe got in the Tallages, and afterwards Rents, with the other Debts of the King; and if any of them had Under-tenants, as it was uſual in Manors, they had *Diſtringas's* in Aid, out of the *Exchequer*, to raiſe the Tallage from their Under-tenants.

See Madd. 517.

Theſe Lands, whilſt under Tallages, (which was the ancient Way of the King's taking the Profits of his own Lands,) were capable of no Improvement; becauſe whatever Improvement was made of the Lands, made the Tallages higher, which were Aſſeſſable at

at the King's or his Justices Pleasure as aforesaid.

And it therefore became the Interest of the Crown to set them at certain Rents, that so they might improve their own Lands to the utmost.

These Demesne Lands belonging to the Sockmen or Plowmen, were afterwards called Tenure in *Socage* *, in Contradistinction to Tenancy by Knt.'s Service; and when there was a certain Reservation of Rent, it was a Mark of Tenancy in Socage; but if Knight's Service, the Demands were casual and uncertain.

* This must be meant Villein Socage, and not Free Socage.

And afterwards several Lands, not Ancient Demesne, that escheated to the King, were granted out in this Manner at a certain Rent †, whereby the Socage Tenures were consequently much more large than the Ancient Demesne.

† *i. e.* In Free Socage.

The King not only gave Lands to the Tenants in Ancient Demesne for Freedom, yet some Antient Demesne Towns obtained that Name by Charters of Incorporation, which gave them a Power to chuse their own Magistrates, &c.

Note; The the Term Burrough imported

his Provision, but likewise several of the Demesne Lands were given to Burroughs for the cloathing his Household.

The Demesnes granted for Provision were given to single Persons that carried on the Tillage by their Sub-tenants and Servants; but these granted in Burgage were granted to Corporations, from whence it came to be the Notion, that a Corporation could not be erected without a Charter from the King *; and these Charters contained not only an Erection of that Body, by a certain Name, with certain Liberties and Privileges, but also a Donation to them of certain Lands to hold of the King, by providing Cloth for his Houshold, or importing Silks or other foreign Manufactures.

* When it is evident Corporations were before Kings:

But these Manufactures at last were not given to the King in Specie; but instead thereof the King's Commissioners imposed a Tallage, which was sometimes paid in by the Corporations themselves, and if not, was collected and

and paid in by the Sheriff, and he charged in his Accounts with it. *Madd.* 483, 487.

The second Sort of Lands were those that were held by *Knight's Service*; there was no certain Sort of Profit arose by those, for they were not for the King's Provision, but his Defence; these were to attend the King in Arms, according to the Array that was made on every Expedition; and whosoever failed in coming or rendring his Quota of Men, according to his Tenure, his Lands were originally liable to be seized into the King's Hands for not doing his Duty; afterwards this Seizure was changed into an *Escuage*, or a Fine, according to the Degree of his Failure; as if he failed one Knight, then for one Knight's Fee; but if they sent, instead of Personally appearing, they made a Composition with the King for not attending in Person, but sending others; if he did not come at all, then he was cessed for all the Lands he held, but had no *Es-*

Zouchii Method' de feudis 164. See and Note Bacon of Government, l. 1 p. 277, 278, 279.

cuage from his Tenants; but if he came, and there was a Deficiency in any of his Tenants, he had Escuage from his Tenants; this was an Inducement for every Person to come or send, because he had no Escuage at all, unless he were there or sent, so that all the Escuage fell on him, and he had no Aid over.

Vide Bacon ubi supra.

This *Escuage* came to be assessed by Authority of Parliament, after the military Expedition was ended, and so much was assessed on every Knt.'s Fee; so that if he, that held *per Baroniam*, came with all his Knights, he was excused; if he came only with Part of his Knights, the Escuage was in Proportion to the Default of such Knights, and such Baron appearing had Remedy over upon all Defaulters Fees held of him; and according to the Mode of that Time, all Barons had many Tenants holding of them, in order that they might be sure to attend with their Quota; for it was a Dishonour to come without them, and

where

where ever Escuage was assessed on the Knight's Tenants making Default, there the Baron appearing in the Host had Escuage on his own Tenants that made Default.

It was a general Rule of the feudal Law, that the Prince never had Escuage unless he went to the War in Person; because the Tenants *in Capite* were only obliged to attend their Prince, and so the Tenants were not originally obliged to attend, unless the Lords were there in Person; but it soon became a Practise after the Conquest, that they might excuse or essoign their Attendance, and attend by Deputy.

The Essoigns were of two Sorts, either Spiritual or Temporal, the Spiritual Essoign came in after the Conquest, when the Spiritual Persons were obliged to hold of the King *per Baroniam*, for such Spiritual Persons could not attend in Person in the Wars, and therefore they were obliged to have Deputies for that Purpose, and these

Deputies upon the Muſter of the Hoſt were allowed.

The ſecond Sort of *Eſſoigns* were Temporal, which was Sickneſs, when the Tenant of the King was ill, and languiſhing, then likewiſe he might appoint his Deputy, and theſe Deputies upon ſuch Excuſes admitted were inrolled in the Hoſt, as if the Tenant appeared in proper Perſon.

At the Muſter of the King's Hoſt, the Marſhal gave a Certificate under his Hand and Seal to all the Tenants that there attended, which was an unconteſted Evidence of their attending the King in his Expedition: when Eſcuage was aſſeſſed upon the Tenants in Parliament, every Tenant might have his Certificate into the Court of *Exchequer*, and upon ſuch Certificate the Barons diſcharged him out of the King's Rent-Roll; for ſuch Certificate of the Marſhal inrolled in the Court of *Exchequer*, was an Authority to the Barons to diſcharge the Pipe-Roll of an Eſcuage upon ſuch Tenant

Tenant, that ſo no *Diſtringas* iſſued upon ſuch Eſcuage; if the King's Tenant had not inrolled his Certificate, then the *Diſtringas* regularly iſſued; but the Tenant might plead ſuch Certificate at the Return of the *Diſtringas*, and get the Diſcharge; but however, the *Diſtringas* did originally iſſue, becauſe he had not inrolled his Certificate; where it was inrolled it was never in Diſcharge to the Sheriff; where it was pleaded upon the Return of the *Diſtringas*, the Sheriff was fined till ſuch Certificate produced.

If any inferior Tenant was diſtrained by his Landlord for Eſcuage, he might replevy; and if upon ſuch Replevin he could plead that he was with the King in the Expedition, and ſhew his Certificate from the Marſhal, the Tenant might have a *Recordari* of ſuch Plaint before the Sheriff, and thereby bring it before the Juſtices in Eyre, and upon producing ſuch Certificate before the Juſtices, the Juſtices granted a Writ *de Returno habendo* of ſuch Diſtreſs.

To

Vide antea.

To every one of these Expeditions the Tenants in Ancient Demesne, and Burgage Tenants aforesaid, were wont to grant an Aid before the Expedition begun, or the King tallaged them after the Expedition was ended; the more was granted in Aid, the less was expected in Tallage, and generally it was a Tenth or a Fifteenth; for higher they never went, and therefore Escuage certain is called Socage, because the Socage Tenants were always taxed in a Sum certain, *viz.* a Tenth or a Fifteenth upon their Goods, in an Expedition.

The Justices Itinerant, before every Expedition, went about to the several Tenants in Ancient Demesne, and to the King's Borrough-Holders in every County within their District, and there they demanded an Aid, which was in the Nature of a Gift or *Auxilium* towards the King's Expedition; and if they could not then give, at the End of the Expedition the King might Tallage to a Tenth, but

not

not to more, towards such Expedition; this was absolutely necessary for the Provision of the King, for the King was obliged to find his own Table during the Expedition, and that could not be done without an Aid or contracting a Debt, and when the Debts were contracted, the King's Tenants in Socage were bound to contribute as far as a Tenth of their Moveables towards the Discharging of the King's Debts; as where the King and his Council sent for the City of *London*, and demanded a certain Sum in Tallage, and if they refused, then the King and his Council ordered them to be decimated towards the Discharging of the King's Debt, and upon the Decimation they were obliged to swear to the Value of their Goods; and of this see a notable Record in *Maddox* 491.

The Legality of this seems Questionable; for the City of London was ever held in Free Socage. But some Tenements therein were held in Ancient Demesn, i. e. in Villeinage.

And here it is to be noted, that after such Tallaging of the Metropolis, the Justices in Eyre went through their proper Circuits, and tallaged all the

the King's Tenants in Ancient Demesne, and his Burgage Tenants; and when the Expedition was prosperous they were freer in demanding the Tallage.

When any Aid was given or Tallage was assessed by the Justices upon any City, Town or Burrough, the Justices Itinerant returned such Aid or Assessment out of their several Iters to the *Justiciarii residentes* in the *Exchequer*, and from thence the Sum was tranferred into the Pipe-Roll, and a *Distringas* issued to the Sheriff, and upon his Return he was to render an Account of the Sum so charged upon him.

As the King gave Lands to Towns, so likewise to several Companies within Towns, as *London*, where the Tallage was assessed on the Aldermen of every Ward, *i. e.* on him who was the Alderman of each respective Company; and these were of good Use, as they rival'd in *Free Gifts* one with the other.

Note; These Tallages are here called Free Gifts, *Ergo Quære.*

When they did not deliver their Goods in Specie to the King they were tallaged *ad decimam*, for the Lands they

they held, and for the Goods of which they were poſſeſſed; but there was this Defference between the Tenants in Ancient Demeſne and Burgage Tenants, that theſe were bound to Suit of Court by two Attornies or Repreſentatives, for each particular Borough or Town; but the Companies within the Town were not repreſented, becauſe they had only Part of the Lands which were firſt granted out of the City; but the Ruſtick Tenants were bound to no Suit but to their Court at home, for their Buſineſs was to attend their Husbandry, in Order to make the moſt of the King's Demeſnes.

But the Burgage Tenants were under the ſame Tallage, becauſe they did not deliver their Goods in Specie no more than the Ruſtick Tenants in Ancient Demeſne.

Afterwards theſe were turned into certain Rents, and then they were not taxed by Tallages; and if any higher Taxes were demanded of them, as

Note; The Antient Demesne Tenants had no Representatives, being never esteem'd Freemen.

10ths and 15ths, and the like, they were given by their *Representatives*.

The Suit of Court of the Burgage Tenures, when made Free by Charter, were both useful to the Publick, and profitable to the King; for their Towns depending upon Trade and Art, they were consulted with when any Laws or Rules were made in Relation to their Arts, and petitioned the King when any foreign Imposts were laid in forcign Dominions which tended to their Damage.

It was profitable to the King, because they came with Gifts, that so they might not be tallaged *: Because though anciently the King assessed those Tallages on his Demesne Towns, by his own Justices or Commissioners, *Maddox* 506, yet afterwards it was found less invidious to receive Gifts and Aids by their Representatives, when they came to do Suit at Court, and they vying one with the other, made it more profitable to the King than the ancient Tallages,

* This shews that some Princes broke thro' their own Charters by tallaging Towns they had made Free.

and ſince they uſually came with ſuch Gifts, they frequently procured the Services of the Lands to be turned into *aſcertain'd* Rents; from henceforward the Tallages ceaſed, becauſe the certain Rent came in lieu of them, and then theſe Aids and Gifts were in the Power of the Burgage-Holders, to give or not. This encouraged the Tenants in Ancient Demeſne to get their Services changed, and towards the latter End of the firſt *Norman* Period, they, with the Men of the County, began to ſend their Repreſentatives, which ſat with the Repreſentatives of the Burghers.

See Bohun's Collection ſeveral Charters, Temp. R. I. Joh. &c. for erecting Antient Demeſne Towns into free Burroughs, which implied a Right of Repreſentation.

The Tenants in Knight's Service held by Suit to the King's Court, and were indeed the proper Suitors to that Court; for the Burgage-Holders being Corporations and great Bodies of Men could not come in Perſon, and therefore they were admitted to ſend their Proxies; but the Tenants by Knight's Service were on the King's Summons to attend his Court, and this they did

in

in Perſon, and were not admitted to appear by Proxy without a ſpecial Leave of Court, which was never granted till they appeared and ſhewing Reaſons for diſpenſing with their Attendance.

It was originally in the King's Power to ſummon which of his Tenants he pleaſed, and ſuch Attendance was deemed a Burden; but afterwards they fell into a more regular Summons of the ſame Perſons; for thoſe that had ſmall Tenancies were not able to bear the Expence of ſuch Attendances, where in Living and Equipage they vyed with each other; and therefore Earls and Barons were in Proceſs of Time regularly ſummoned to ſuch Attendances, and theſe were anciently Honours compounded of ſo many Knight's Fees as would bear the Expence; a Barony conſiſted of 13 $\frac{1}{3}$ Knight's Fees; a Knight's Fee was then of the Value of 20 *l. per Ann.* which according to the preſent Value of Money was *per Ann.* and the

Value of a Barony was computed to amount to 400 Marks, and an Earldom to 400 *l.* which was 20 Knights Fees, so that the Unit was the Knight's Fee; the Earldom held in Proportion to the Knight's Fee, as the Pound to the Shilling; and to the Barony, as the Pound to the Mark; and the Barony held proportionably to the Knt.'s Fee, as the Mark to the Shilling.

The Baronies and Earldoms were anciently granted by so many Knights Fees, *viz.* if their Honour consisted of 13 ⅓ Knights Fees, they were compellable to hold *per Baroniam*, and he that had 20 Knights Fees, to hold as an Earl; but when these Grants came to be lost by Time, they held their Honours as they did their Estates, by the prescriptive Right of Possession; and then their Summons to sit in Parliam. was a sufficient *Indicium* of that Honour, even after their Estates were spent and gone; because they had anciently such Estates as corresponded to such Summons, and such Summons

gave them a Seat on their ſeveral Benches in Parliament; and therefore their Honours continued by ſitting in that Ariſtocratick Body, though their Eſtates were ſpent, on which the Summons firſt iſſued.

Seld. Tit. Hon. 688, 691.

But Mr. *Selden* is of Opinion, that there was no certain Number of Kn'ts Fees, neceſſary to make a Baron or Earl; but that they conſiſted in ſo many Knights Fees, as were contained in the Charter, and with ſo many Knights he was obliged to attend, and that the Number of Knights contained in the Charter, regulated the Number of Knights Fees contained in ſuch a Barony: And indeed nothing is more certain, than when Baronies were firſt created or given out after the Conqueſt; when the whole Nation took new Charters from the Conqueror, the Charter expreſſed the Number of Knights reſerved on ſuch Baronies; and that ſuch Barons were wont to grant out Lands to their Vaſſals, to hold by Knights Fees, to attend

tend and do that Duty which was reſerved by the Charter. From hence came all the Fruit of the feudal Tenure; for during Minorities, the King was forced to find another Perſon to ſerve inſtead of the Baron; and therefore had the Fruits of the Barony, in Order to breed the Baron to his Service; the Baron for the ſame Reaſon had the Wardſhip of his Tenants Sons, in Order to breed them up to the Wars; and ſince the Knights Fees were given to do the Duties of the Tenure, they were not certain, but depended on the Bounty and Agreement with the firſt Baron and his Tenants; but in thoſe early Times they very well knew what was neceſſary for the Support of a Knight, a Baron, or an Earl; and in *Ed.* the 3d's Time, when the *Modus tenendi Parliamentum* is ſuppoſed to be wrote, they thought the uſual Subſiſtence of a Knight could not be leſs than 20 *l.* *per Ann.* that of a Baron 400 Marks, and that of an Earl 400. *l.*

2 Inſt. 8. Bacon, lib. 1. p. 308.

ADDENDUM.

[Touching Reliefs, pay'd for Knt's Fees, *&c.* See *Selden's Titles of Honour*, *fo.* 688. 2 *Inst.* 8. *Bacon of Government*, *lib.* 1. 308, *&c.*]

CHAP. III.

Of Tenures in Capite, &c.

Spel. Gloss. 67. Seld. Tit. Hon. 692.

TOwards the latter End of the first *Norman* Period, when any Barony escheated they were wont to break such Baronies into smaller Tenures *in Capite*; because they found their Barons, by their great Possessions, were able to give the Crown great Disturbance; and it was impossible, these growing so numerous, as to be at one Time about 3000, should be all summoned at a Time, and therefore the King selected from that Num-

Number as many as he thought proper; this created great Variety in the Summons to Parliament, and first gave Ground to that Opinion of the Lawyers, since much disputed, that it was the Summons to Parliament that created the Baron, and it has generally been agreed to be right, that the Summons and Sitting in Parliament makes the Baron; because when the Charters of *Will.* the 1st were lost and destroyed by Time, the feudal Barons had no Evidence of their Baronage, but their doing Suit and Service as Barons at the King's Court; as where the Charter of the Feoffment of the Tenement is lost, the Tenant has no better Evidence of his holding of the Manor, than that he and his Ancestors have done Suit at the Lord's Court time immemorial, and proving this by the Rules of the Manor.

But when the King had broke the greater Baronies into lesser, the great Barons composed a House by themselves, and did not sit by the *Barones Mi-*

Minores; and the *Barones Majores* made an Aristocratick Body of themselves; and the *Barones Minores*, together with those that held of the King to pay Suit to the County-Court, sent Representatives to Parliament, and sat with those Representatives of the Boroughs, who now having got their Tenure under certain Rents, concurred in all extraordinary Aids to the King; and the Tenants in the County being such as held immediately from the King, either to do Suit at the King's Court, or at the Sheriff's in the County-Court, their Representatives were to be Knights; whereas the Representatives of the Cities and Boroughs were to be Burgesses and Citizens of each particular Town.

The Barons, or Tenants *in Capite*, were such as were to accompany the King in the Wars, and they were to come attended with so many Knights Fees according to their Patents; and these were mustered by the King's Marshal.

The

The Names of the Perſons appearing, as likewiſe of the Defaulters, were inrolled at the next Parliament.

They aſſeſſed the Eſcuage, which was the Nature of an Afferement of a Sum of Money, by the *pares Curiæ*, upon every Defaulter.

Generally ſpeaking, the Eccleſiaſtical Barons did not go to the Wars; and therefore we find in *Maddox*'s Account of Eſcuage, there were more Rolls of Eſcuage taxed upon the Biſhops and Abbots, than any other Perſons.

If a Baron was taxed to Eſcuage, and was diſtrained for the ſame unduly, when he had appeared in the Service, he was to take out a Certificate from the Marſhal of the Hoſt, under his Seal, which was to be ſent to the Juſtices, as *Littleton* ſays *fo.* 74.

Theſe Certificates were generally before the Diviſion of the Courts, and therefore when *Littleton* ſays the Certificate was ſent to the Juſtices, it

ſeems to be a Miſtake in the Printer, and that the Certificate was ſent to the *Juſticiar* and Barons, under the Seal of the Marſhal of the King's Hoſt; and ſo a *Diſtringas* went out of the *Exchequer* from the *Juſticiar* and Barons, to diſtrain all the Defaulters; and if any Body was diſtrained where he had ſerved, he might appear at the Return of the *Diſtringas*, and plead that he was *in ſervitio Regis*, and was to be tried by ſuch indented Certificate, remaining before the *Juſticiar* and Barons, and nothing elſe.

Madd. 468.

If likewiſe any Abbot that held in Mortmain was diſtrained, he might traverſe that he did not hold by Knt.'s Service, but free from all Eſcuage and Tallage.

There are likewiſe in *Maddox* ſeveral Inſtances of *Diſtringas*, that iſſued on Behalf of the Tenants *per Baroniam*, to diſtrain their Under-Tenants; becauſe the Under-Tenants were obliged to aid them, in Order

Madd. 470, 471.

to

to the paying the King's Escuage; and this was in the Nature of a *Distringas* in Aid, since they were indebted to the Baron for Escuage, as the Baron was to the Crown.

The King's Tenant *in Capite*, being his own particular Freeman, who did suit at the King's Court in the most honourable Manner, they used likewise to affere, or bring in their own Assessments, just as the Freemen in a Court-Baron do affere the Assessments of those who are absent; and this was a good Contribution, because it put it in the Power of those, who had discharged their Duty, to assess the Rest; for the Escuage was after assessed by the Barons coming in to the King's Standard, before he went on the Expedition; and if it were not then assessed, but remained afterwards to be assessed in Parliament, which was the more common Case; yet the Number of those doing their Duty, for fear they should not have Escuage from their Tenants, was so much greater Madd. 445.

greater than the Absenters, that they generally made such Assessments as contented the Crown; and indeed it was thought but Justice so to do, because the only Consideration of those Tenures was the doing Service; and therefore the Profit of the Lands, from the Time of the last Escuage paid, was answerable to the ensuing Escuage for the Non-performance of the Duty required of them; so the Tenants, who had done the Duty, usually put the Load heavily on those who had been negligent of the Expedition.

The Tenants in Ancient Demesne found Provision for the King, and the Tenants by Burgage Tenure found Cloth and other Merchandize for him; and these Provisions being valued at a certain Rate, were afterwards in some returned into Rents, and in some received in Specie.

But upon particular Occasions of Wars, the Justices Itinerant were wont to go within these Liberties, and after a Solemn Declaration of the King's Necessities,

Neceſſities, they uſed to ask a free Gift in that Place towards the King's Wars; and ſuch Tenants and Burgeſſes were uſed to vote in the firſt Place, that the King ſhould be ſupplied; in the next Place, the Quantum of the Supply; and then they appointed their own Aſſeſſors, which were generally two, that rated every Perſon towards that Quantum, and then the King's Collectors entred into ſuch Liberty, and collected it according to the Rate thus impoſed.

If ſuch Boroughs would not either ſupply the King, or not ſupply him in Proportion to his Wants, the King could not tax them by his own Power, becauſe they were free, and not Villeins; for none but Villeins could be taxed *haut en baſſor*, at the meer Pleaſure of their Superiors; where they would not grant a Supply, it was uſual for the Juſtices in Eyre to enquire into the Proceedings; and if there was any Abuſe of their Liberties, *Quo Warranto's* were ſent down in

Note; Tenants in Burgage were Freemen, but Tenants in Ancient Demeſne were the King's Villeins.

in Order seize the Franchises. From this we may see the Inequality of Representation in the several Counties; for there were but two Representatives in a County, and the Rest were according to the Number of free Boroughs that were in that County; and therefore when any Manor of Ancient Demesne was so changed, and the Provisions they were wont to answer to the Crown in Specie, were turned into a Rent, they erected it into a Friburgh, and there were Words in the Charter to give them a Liberty discharged from all Payments.

These were not taxed but by a Free Gift, which was managed as herein before is mentioned.

But these Ancient Demesne Lands, that sent their Provisions in Specie, were not tallaged; because after the Provisions rendered to the Crown, there was but a small Livelihood remaining *to* themselves for Labour and Pains; and therefore they could afford no Tallage.

Hence

Hence it is, that in the Time of *Ed.* the 1st, some Manors of Ancient Demesne sent Members to Parliament, and not others, because such were the *Friburghs* subject to Tallage. See Bohun's Right of electing to Parliament, 106, 122, 142, 152, 181.

[Note; These Antient Demesne Manors seem to have been made Free by Charter. Q.]

In *Cornwall* they had Members of Parl. because there were 20 Friburghs in that County; and that came to pass, because that was an Earldom, and afterwards a Dukedom apart, and genenerally possessed by some of the Royal Family; and it being a Place abounding in Tin, they erected as many Free-ports as they could, for the exporting of that Manufacture; and some of them were under express Conditions mentioned in their Charters, that they should not be taxed but when the rest of the King's Subjects were. Ib. 157, 186.

When the Baronies *Majores* were broke into many Baronies *Minores*, several Boroughs likewise had the Right

Right of assessing the Escuage; and therefore they were called with the rest of the greater Barons to the Assessment of the Escuage; but not being able to come in Person, they sent their Representatives (as has been already mentioned) to sit with the Burgage-holders; and thenceforward by the Policy of *Ed.* 1. they were blended in one House; and therefore the Burgage-holders and Citizens joined in the Assessment of the Escuage; so the Knights joined in the Assessment of the Aids of Burgage-holders and Citizens; by these Means they vyed with each other, who should give most to the Crown in their several Ways; and thus *Ed.* 1. by calling the Knights, Citizens and Burghers to each Assessment, contented them, and served his own Purpose; because nothing was done but by their own Consent in the Assessment of Escuage or Aids; and from the Time of his Grandson *Ed.* 3. the Military Tenures declined, Mercenaries were used, and they made

uſe of another Manner of taxing, which ſhall be hereafter mentioned.

But this is to be noted, that when the Burghers had aſcertained their Rents, and were ſent for as by the King to give him further Aids, they had Inſtructions from their Principals how much they ſhould give. Hence the Tax began with them, and from the *Barones Majores*; becauſe they could not agree with their Propoſals, if they exceed the Commiſſion they had from their Principals.

After *Ed.* 1. had modelled his excellent Conſtitution, and had brought Lords and Commons under a Regulation, which ſeemed to be for the general Good of the whole, He ſeemed to be induſtrious for the Deſtruction of the Records of what was paſſed; ſo that we cannot with great Certainty have an Account of our Government before his Time. It had been the conſtant Uſage before the Conqueſt, that all Judicature proceeded from the King; this Rule was regularly

larly observed from the Conqueror's Time; for he seemed to have been jealous of this Point of his Prerogative more than of any other, as is plain by confining the County-Court to 40 Shillings; and if they held Plea for a larger Sum, a *Justicies*, which is in Nature of a Special Commission, was necessary; and therefore the Judicial Authority, as is elsewhere mentioned, was exercised from the Time of the Conquest, by the King's *Justiciar* and Barons, summoned for that Purpose by the King's Authority; and therefore when *Ed.* 1. modelled the Parliament into a regular Assembly of two Houses, where they always sat, *viz.* in the Upper House, or House of Peers, it seems by *Coke*, 2 *Inst.* 50. they tried a Nobleman by his Peers very anciently in the Case of the King, as appears by the Earl of *Hereford*'s Case, in the Time of *Will.* the Conqueror.

This turns on the Principle of the feudal Law, *Si inter Dominum &*

ſalum lis moveatur pares Curiæ ſunt Judices; and therefore the Peers in the Time of Parliament were try'd by the Peers in the Houſe of Lords, and out of Parliament by the *Juſticiar*; and in his Abſence by the Steward of *England*, who ſummoned ſome of his Peers on the Trial, and 12 at leaſt were obliged to appear; this Summons is ſet forth 3 *Inſt.* 28. where my Lord *Coke* ſays, there muſt be twelve or more appear. Feudal Law, *Vigellius* 87. *Guidothus* 197. *Laſius* 196. Where all agree the Rule to be, that if the Contention was between the Lord and his immediate Vaſſal, the *Pares* were Judges; tho' this was ſubject to many Diſtinctions afterwards in the Empire, for the Regal Feud was judged before the Emperor's Judges, and the Rule was confined to Feuds not Regal; and ſo if the Trial was between the Lord and his Vaſſal, if the Lands were Feudal or Allodial, it was before the ordinary Judges, and not the *Pares*; but in *England* the *Pares* were Judges of

the Fact in every Case, (as is elsewhere mentioned,) and the immediate *Pares Curiæ*, when the Contention was a Case of Felony or Treason between the King and his Vassal, which is according to the old Rule of the Feudal Law; but in other Cases it was *coram paribus*, not of the Feudal Court, but in the County where the Fact was done, which was on the Presumption that they would have the best Knowledge of Fact, and Credit of the Witnesses; and therefore in all other Cases, unless of Treason or Felony, the ordinary Trials were by Jury. *Vide* Dr. *Stillingfleet of the Bishop's Jurisdiction in Capital Causes*, 360 to 373. And though they anciently summoned but some of the Peers, yet when the Parliamentary Peerage had been settled in *Edw.* 1. and so downwards, they summoned them all; and the Manner of giving their Opinion is, 1 *H.* 4. 1. 3 *Inst.* 28, 29, 30. But the Bishops claimed an Ecclesiastical Privilege, to be only tried by the Archbishop

biſhop as their Ordinary; therefore in the Caſe of *Mark*, Biſhop of *Carliſle*, where this Challenge was made of the Liberties of the Church, and over-ruled, he did not challenge his Peerage; and ſo was the Caſe of *Fiſher*, Biſhop of *Rocheſter*, in *H.* 8. Dr. *Still.* 368. for they would not make any Challenge to be tried by their Peers; for they would have admitted a temporal Juriſdiction; ſo by *Non-uſer* of any Right of being tried by their Peers in Capital Caſes, theſe Biſhops, who held *per Baroniam*, and conſequently had a Privilege to have a Trial, totally left the ſame, and are tried by a common Jury.

All Peers are ſummoned by Writ to Parliament, the Form of which ſee in *Cotton's Records* 2, 3, 4.

Anciently, as was ſaid, the Tenure firſt created the honour, and ſuch as held *per Baroniam* were ſummoned to do Suit and Service in Parliament; and ſuch Summons was an Evidence of ſuch Tenure: Afterwards, when theſe

Tenures were broke, the Summons gave the Barons Authority to sit, provided they sat according 1 *Inst.* 9. b. 16 *E.* because their sitting in Parliament makes them Part of the Aristocratick Body; so if they are legally summoned and sit, they have a Right ever afterwards; this is much controverted by *Pryn* in his *Plea for the House of Lords*, from 147 to 161.

Seld. Tit. Hon. 530. b. 495, 496. Show. Rep. 5.

But in all Degrees of Quality above a Baron, a Summons is not sufficient; because there are other Ceremonies requisite, as in that of a Viscount, there must be performed, unless dispenced with by Letters Patent; and these being Matters of Record must be produced to shew his Title; so the Earl is created by girding on a Sword, and the solemn Imposition of a Coronet, in *England*; and in foreign Places, by delivering him an Ensign; and the Judges, though they are summoned to Parliament, come only to assist the Parliament; and therefore the Chancellor, who is in Nature of a Steward in the Court-

Spel. Glos. 142.

Court-Baron of the King, lays the Mace on the Table, when it is an Houſe, to ſhew that the King's Steward, who is appointed in his Abſence to hold the Court, is there; and the Judges are called *Quod interſitis vobiſcum & cum cæteris de conciliis*; and therefore they ſit round the Table in Order to aſſiſt the Speaker, or the King (when preſent) in Matters of Law. 4 *Inſt.* 4. But the Chancellor has no Voice unleſs he be a Peer, for anciently he was none, unleſs he held *per Baroniam*; now he is none, unleſs created by Patent or Summons; for in the Court-Barons, or County-Courts, the Steward was not Judge, but the *Pares*; nor was the Speaker in the Houſe of Lords Judge, but the Barons only. 4 Inſt. 266.

The firſt Summons of a Peer to Parliament differs from an Ordinary Summons; becauſe in the firſt Summons he is called up by his proper Chriſtian Name and Surname; and not having the Name and Title of Dignity in him, till he has ſat as Part

of the Aristocratick Body; but after he has sat, the Name of Dignity is Part of the *Cognomen*; but this Writ of Creation in all other Things is the same with the ordinary Writ that calls them.

But *Quære*, If the Person on his first Summons is called by the Name of Lord, and sits under that Name as Part of the Aristocratick Body, whether by that he would not be ennobled; as if the Father, being Lord *A.* was outlawed for high Treason, and his Son is called Lord *A.* which he was not at the Time of issuing the Writ, and sits in the House by Virtue of such Writ, *Quære*, whether sitting as Part of the Aristocratick Body, he be not vested with the Title and Dignity of Lord *A.*

[*Resp.* I think this new Summons, and Sitting in Pursuance of it, is clearly a new Title vested in the Son, who cannot derive any Title from his Father during his Father's Life: For the Outlawry may be reversed, nay even an Act of Attainder repealed, *&c.*]

CHAP.

CHAP. IV.

Of the Eccleſiaſtical Tenures, and of Convocations.

IN the *Saxon* Times the Lords Spiritual held by Frankalmoigne; but yet made great Part of the Grand Council of the Nation, being the moſt learned Perſons that in thoſe Times of Ignorance met to make Laws and Regulations.

But *William* the Conqueror turned the Frankalmoigne Tenures of the Biſhops, and ſome of the great Abbots, into Baronies; and from thenceforward they were obliged to ſend Perſons to the Wars, or were aſſeſſed to the Eſcuage, and were obliged to attend in Parliament; and then their Attendance was complained of as a Burthen; and this begat the grand Quarrel in *Henry* the 2d's Time, between

Note; The Conſtitution of the Saxon Church, and the Imbodying of the Prelates into the temporal Government &c. will beſt appear from that excellent Treatiſe uſually ſtyled *Bacon of Government*, lib. 1. chap. 5. to chap. 16. Vide ib. ch. 11. of Lands given to Biſhops, &c. in Frankalmoigne; and Vide ib. ch 47. an Account of the Introduction of the Canon Law and Eccleſiaſtical Juriſdiction, by W. 1. &c.

tween the King and *Thomas Becket*; for the Statutes of *Clarendon* required such Attendance; which confirmed the Escuage on them, for this they made many subtle Exceptions, as that the Court took Cognizance of the Treasons and Felonies; whereas the Clergy, by the Canon of *Toledo*, were forbid to give Judgment in Blood, *His, qui in Sacris ordinibus constituti sunt, in judiciis Sanguinis adjudicari non licet*; therefore to obviate this Objection, the Constitutions of *Clarendon* permitted them to withdraw in Cases of Blood. Notwithstanding this Concession, they still objected against the 11th Article of this Statute, which says, that *Archiepiscopi, Episcopi, & universales Personæ, qui de Rege tenent in Capite, habent Possessiones suas de Domino Rege sicut Barones, & sicut Barones cæteri debent interesse judiciis Curiæ Regis cum Baronibus, quousque perveniatur in judicio ad diminutionem membrorum vel ad mortem.* See *Pryn of the House*

of

of Lords, 221. This Article obliged them to do Suit in the King's Court; and therefore though they had excepted Case of Blood, yet they knew their doing Suit in the King's Court confirmed their Estates as Baronies; and they did not care that the Munificence of Frankalmoigne of the ancient Kings should be changed into such Tenures; but notwithstanding the Quarrels with *Becket*, the King prevailed that they should continue Barons; and as Barons (*i. e. Suitors*) they sit in the House of Lords.

But the inferior Clergy, which held by Frankalmoigne, were not comprehended within any of the Taxes and Tallages, which were assessed on the King's Ancient Demesne and Burgage Tenants; nor in the Escuage which was assessed on the King's Tenants *per Baroniam*, and other Tenants by Knights Service; but 18 *Ed.* 1. the King being under great Difficulties through his Wars in *Scotland*, and the Kingdom being exhausted by the Barons Pryn. 221, 242.

rons Civil Wars, projected the present Constitution, (*viz.*) That the Earls and Barons should be called (as formerly) and imbodied in one House, and that the Tenants in Burgage should send their Representatives; and the Tenants by Knights Service, and other Socage Tenants in the County, should send their Representatives to Parliament; and these were imbodied in the other House; he designed to have the Clergy as a third Estate; and as the Bishops were to sit *per Baroniam* in the temporal Parliament; so they were to sit with the inferior Clergy in Convocation; and the Project and Design of the King was, that as the two temporal Estates charged the Temporalties, and made Laws to bind all temporal Things within this Realm; so this other Body should have given Taxes to charge the spiritual Possessions, and have made Canons to bind the Ecclesiastical Body. To this End was the *Premunientes* Clause in the Summons to the Archbishops

biſhops and Biſhops, as follows, (*viz.*)

Premunientes priorem & Capitulum Eccleſiæ Veſtræ, Archiedecanum totumque Clerum Veſtræ Dioceſis, facientes quod iidem Prior & Archiedecanus in propriis perſonis ſuis, & dictum Capitulum per unum, idemque Clerum per duos procuratores idoneos, plenam & ſufficientem poteſtatem ab ipſis Capitulo & Clero habentes, una vobiſcum interſint modis omnibus tractandum, ordinandum & faciendum Nobiſcum & cum ceteris prælatis & proceribus & aliis qualiter ſit hujuſmodi periculis & excogitatis Malitiis obviandum. Teſte Rege apud Wingham 30 *Die Septembris.*

Wake's Authority of Chriſtian Princes 364.

This altered the *Engliſh* Convocation from the foreign Synods; theſe were totally compoſed of the Biſhops, who were the Paſtors of the Church, for the Clergy were regularly eſteemed only his Aſſiſtants; and therefore the Biſhops only were collected to compoſe ſuch foreign Synods, to declare what

what was the Doctrine, or ſhould be the Diſcipline of the Church.

In the ancient Church they had but one Paſtor to every particular Church or Dioceſe, and the other Clergy were ambulatory at the Biſhop's Pleaſure within the Dioceſe; and though after the Council of *Lateran*, the parochial Clergy were ſettled in each Pariſh, the Biſhops only retained a Chapter in the Cathedral Church as Aſſiſtants to him; yet the Biſhop was reckoned to be the ſole Paſtor of the Church, and they to have the Care under him.

Hence in Provincial Synods, the Biſhops only met and were convened by the Metropolitan; and each Biſhop likewiſe held a Dioceſan Synod with his own Clergy, in which he made Rules and Orders for the Regulation of the Dioceſe, provided they were not againſt the Canons of the Province.

Ed. 1. projected to have made the Clergy one third Eſtate dependant on himſelf; and therefore not only called the

the Biſhops, (whom as Barons he had a Right to ſummon,) but the reſt of the Clergy, that he might have their Conſent to the Taxes and Aſſeſſments made on that Body; but the Clergy foreſeeing that they were likely to be taxed, pretended they could not meet under a temporal Authority to make any Laws or Canons to govern the Church; becauſe their Canons were made under the Inſpiration of Heaven, and not by any Authority derived from temporal Powers; and this Diſpute was maintained by the Archbiſhops, who were very loth the Clergy ſhould be taxed, or ſhould have any Intereſt in making Eccleſiaſtical Canons, which formerly were made by their ſole Authority; for though thoſe Canons had been made at *Rome*, yet if they were not made in a General Council, they did not think them binding here, unleſs they were received by ſome provincial Conſtitution of the Biſhops; and though the inferior Clergy, by this new Scheme of

of *Edward* the 1ſt, were let into the Power of making Canons; yet they foreſaw they were to be taxed, and therefore joined with the Biſhops in oppoſing what they thought an Innovation; this they did under Pretence that their Power was totally derived from Heaven; and therefore they paid no Obedience to the *Premunientes* Clauſe; but the Archbiſhops and Biſhops threatned to excommunicate the King; he and the temporal Eſtate took it ſo ill, that they would not bear any Part of the Publick Charge, that they were beforehand with them, and they were all outlawed, and their Poſſeſſions ſeized into the Hands of the King; this ſo humbled the Clergy, that they at laſt conſented to meet. To take away all Pretence, there was a Summons, beſides the *Premunientes* Clauſe, to the Archbiſhop, that he ſhould ſummons the Biſhops, Deans, Archdeacons, Colleges and whole Clergy of his Province. From hence therefore the Biſhops, Deans, Archdeacons

deacons, Colleges and Clergy, met by Virtue of the Archbiſhop's Summons; which being an Eccleſiaſtical Authority, they could not object to it, and ſo the Suffragan Biſhops came to Convocation, by Virtue of the Archbiſhop's Summons; the Clergy eſteemed it to be in his Power, whether he would obey the King's Writ or not; but when he had iſſued his Summons, they could not pretend it was not their Duty to come; but the *Premunientes* Writ was not diſuſed, becauſe it directed the Manner in which the Clergy were to attend, (*viz.*) the Deans and Archdeacons in Perſon, the Chapter by one, and the Clergy by two Proctors: But however, they held no Convocation could meet, without the King's Writ to the Archbiſhop; becauſe on that Writ his Summons went out, and it was on the Foot of the Archbiſhop's Summons, they ſat as a Provincial Synod; and the King, by his own Writ, prevailed on the Archbiſhop to convene the Synod; and he

by his own Authority and Legantine Power from the Pope, was confeſſed to have Authority to Summon the whole Clergy; the *Premunientes* Clauſe was inſerted in that Writ to every Biſhop, as well as the Archbiſhop, which directed the Manner in which the Clergy ſhould be choſen; but the Writ to the Archbiſhop was only in general to ſummon his Suffragan Biſhops, Deans and Archdeacons, Colleges, and all the Clergy of his Province; and on this Writ to the Archbiſhop iſſued his Summons, both to the Suffragan Biſhops, Deans, and Archdeacons in Perſon, to the Chapter by one, and to the Clergy by two Proctors; ſo that the Summons follows the *Premunientes* Writ exactly, which was directed to him and to the Biſhops.

They met and choſe on ſuch Summons; for they allowed, as the Archbiſhop might have a temporal Authority, as well as a Spiritual Power, ſo he might have a temporal Motive to

Suarez de legib. lib. 4. c. 13.

ſummon a Spiritual Synod; but yet leſt it might be thought (of which they were very jealous) that their Power was derived from temporal Authority, they ſometimes met on the Archbiſhop's Summons without the King's Writ, and in ſuch Convocation the King demanded Supplies, and by ſuch Requeſt owned the ſpiritual Authority of Governing; ſo that the King's Writ was reckoned no more by the Clergy than one Motive for their Ceremony (Aſſembly); but if the Archbiſhop in his Summons recited the King's Writ, they proteſted againſt it; becauſe that was laying his Authority upon the King's Writ, which the Clergy would by no Means endure; for they would not conſent that the Prince had any Eccleſiaſtical Power or Authority to convene Synods; but they allowed the King's Writ to be a Motive for the Archbiſhop to convene, if he agreed with the King in Judgment.

The Judgments in Parliament, that put the Clergy from the King's Pro-

tection do not appear; but that they were so, appears from the Close Roll 22 *Ed.* 1. where it appears that the Prelates and whole Clergy of the Kingdom had granted one Half of their Benefices and Goods, of which a Tenth had been before granted to the Use of the Holy War, and upon this he took the Clergy into his Protection; from whence the Taxation of the Clergy was at first set on Foot, under Pretence of the Holy War, and that he taxed them afterwards to his own Occasions; according to that, the Writ is *juxta taxationem ultimo inde factam*, which no King durst have done, but one that had got Reverence amongst the People, by his Exploits in the Holy War; on this Concession of the Moiety it appears he took them under his Protection.

Echard 316.

Ryley 462, 463.

This succeeded so well, that when the Pope incroached on the King, by collating to Ecclesiastical Benefices by his own Papal Provisions, Statutes of Provisoes and *Præmunire*, on Appeals

3 Inst. 119. 25 E. 3. p. 120. 27 E. 3. C. 1. Gibson's Append.

to

to *Rome*, were made, which paſſed the better on the Clergy; becauſe the Statutes recite that theſe Benefices were given to Aliens.

But the Proceſs of *Præmunire* was made uſe of to put the Clergy out of Protection, and they uſed the Word *Præmunire* in their Summons to the King's Court, becauſe in the *Premunientes* that Word had been uſed, and Judgment on this Premunition was given in this Form, (*viz*) *Conſiderat' eſt quod præd' E. extra protection' Domini Regis ponatur, ac qd' vita, bon' & Catall', terr' & tenement' ipſius E. W. ſunt Domino Regi forisfact', E. W. Committitur Mar' duran' benepl'ito Domini Regis &c. Ent.* 435. From henceforward, inſtead of making one Eſtate of the Kingdom, as the King deſigned, they compoſed two Eccleſiaſtical Synods under the Summons of each of the Archbiſhops, and being forced into theſe two back Synods before-mentioned, they ſat and made Canons, by which each re-

ſpective Province was bound to give Aids and Taxes to the King; but the Archbiſhop of *Canterbury*'s Clergy and that of *York* aſſembled, each in their own Province; and the King gratified the Archbiſhop's Vanity, by ſuffering this new Body of Convocation to be formed in the Nature of a Parliament. The Archbiſhop aſſumed the State of a King, his Suffragans ſat in the upper Houſe as his Peers; the Deans, Archdeacons, Proctor for the Chapter, repreſented the Burghers; and the two Proctors for the Clergy, the Knights of the Shire; and ſo this Body, inſtead of being one of the Eſtates, as the King deſigned, became an Eccleſiaſtical Parliament to make Laws, and to tax the Poſſeſſions of the Church; and to cajole the Archbiſhops, the King received not only his own Aids, but Benevolences were given by the Convocation to the Archbiſhops.

25 H. 8. 19. At the Reformation, by the Act of Submiſſion of the Clergy, theſe Convocations were to be aſſembled only by

by the King's Writ; whereas before they often met on a Summons from the Archbiſhop, without his receiving any Writ from the King, becauſe they looked on him as having an Authority from Heaven; and by the Statute they could not make any Canon without the King's Licence, or put them in Execution without it.

From hence they began to call the Convocation one of the three Eſtates; becauſe they could not meet without the King's Writ, or make or execute any Canon without the King's Licence, (as has been already obſerved;) but however, not only the *Premunientes* Clauſe, but the Writ to the Clergy continued, becauſe they ſtill apprehended no Canons could be made by temporal Authority. 5 Ed. 4. c. 1.

Thus this continued till the 13 *Car.* 2. *c.* 4. when the Clergy gave their laſt Subſidy; when it appeared more advantageous to continue the Taxing of them by Way of a Land-tax and Poll-tax, as it was in the Rump Times;

the Clergy found this easier than the Tenths, which they used to pay in their former Way of taxing. From henceforward it passed that they should have a Vote for Members of Parliament, as they had in the Rump Times, and they were taxed as the Laity were.

In *Ireland* the Parliament depending upon the King, the Clergy seemed to have complied with the Model of *Edward* the 1st, in sending Proctors to Parliament; and the Archbishops, and mitred Abbots sat in the upper House, and the Proctors in the lower House. Hence by 36 *H.* 6. *c.* 1. it appears, that they made a Law, that beneficed Persons should forfeit their Benefices, if they were absent without Leave, which sort of Regulation was made in *England*, by Ecclesiastical Authority, before the Submission of the Clergy in 25 *H.* 8.

3 Ed. 4. c. 1. It is to be known that the *Premunientes* Writ in *Ireland* summoned only the Proctors of the Clergy, and not

not the Deans, Archdeacons and Proctors of the Chapters, as in *England*, as appears by an ancient Writ in *Richard* the 2d's Time, wherein the Proctors only are ſummoned; and it is the only Writ extant before *H.* 8. on which the Clergy were ſummoned; ſo that the Parliamentary Eſtabliſhment, in Relation to the Clergy, differed from that which was eſtabliſhed in *England*, for the Reaſon that *Edward* the 1ſt projected the Repreſentatives of the Clergy, in Proportion to the Number of the temporal Body; and becauſe there were many Corporations that held in Burgage-Tenure in *England*; therefore the Deans, Archdeacons, and Proctors of Chapters, were let in to make an equivalent Number; but in *Ireland* they were only Repreſentatives of Shires; for the Boroughs did not ariſe from Burgage-Tenures, as in *England*, but from Conceſſions from the King to ſend Members, which were erected in later Times, when by ſecuring an Intereſt

in such Towns, proper Representatives to serve the Turn of the Court were sent to Parliament; but the ancient Members being only for the Shire, the Proctors were chosen from the County to answer them in Number.

But by 28 *H.* 8. *c.* 12. the Proctors of the Clergy are excluded from any Suit in the lower House of Parliament, and sometime they seem to be summoned by the *Premunientes* Writ, and the Writ to the Bishop in the same Words, as in *England*; all the Proctors came to Parliament from all Parts of the Kingdom; so they assembled in the Convocation at one Synod where the Parliament was held, and did not form four synodical Meetings in the four distinct Provinces, as they did in the two distinct Provinces in *England*; and therefore they make one National Synod under the Primate, and there, by the King's Leave, they make Canons which bind the whole Clergy through the four Provinces.

If

If any Member of the Convocation, who is Proctor, dies, the Archbiſhop iſſues his Mandate to the Biſhop of the Dioceſe, to elect another; and this by Virtue of the Power inherent in him to Summon his Suffragan Biſhops, who being to obey him *in omnib' licitis & honeſtis*, and the Clergy their Biſhops in like Manner, they by that Command make an Election to ſupply the Place of one of their Proctors.

In *Ireland*, when any Proctor dies, the Mandate iſſues from the Archbiſhop of the Province, to the Suffragan Biſhop of the Dioceſe, and not from the Primate, unleſs in his own Province; becauſe the ſynodical Authority in each Province belongs to the Archbiſhop of that Province, tho' they meet in one Body to make a National Synod.

During the Times of Popery, the Biſhops contended that they were to be tried only by their Ordinaries, and therefore would not ſubmit to be tried

per

per Pares; from hence it is that there is no Instance where they were tried by their Peers, tho' they held *per Baroniam*; and therefore after the Reformation, when the temporal Power prevailed, there being no Instance where they had been tried *per Pares* in Parliament, they were tried by common Juries; though there were Instances in the Times of Popery, where the Bishop being arraigned for high Treason, pleaded he was to be tried by his Ordinary; and being overruled, was tried by a common Jury, because he would not have two dilatory Pleas.

Stilling. Juriſd. of Bps. 367, 368.

Sometimes the Lords, and sometimes the Commons, were wont to send to the Convocation for some of their Body, to give them Advice in enacting Laws touching Spiritual Matters; such were those temporal Laws, in Relation to the Lollards and Hereticks, which were enacted for the Punishment of such Hereticks as were cast out of the Church on Excommunications

nications; but such Matters purely Spiritual they generally transacted before the Reformation; afterwards they began to receive the Assistances of the Convocation for the Settling of the Church; but this only by Way of Advice; for they have always insisted that their Laws, by their own natural Force bind the Clergy, as the Laws of all Christian Princes did in the first Ages of the Church.

CHAP.

CHAP. V.

Of Suitors in the County-Courts, and the King's Revenue there.

BESIDES the Tenants of the King, which held *per Baroniam*, and did Suit and Service at his own Court; and the Burghers, and Tenants in Ancient Demesne, that did Suit and Service in their own Court in Person, (and in the King's Court by Proxy,) there was also a certain Set of Freeholders, that did Suit and Service at the County-Court; these were such as anciently held of the Lord of the County, and by the Escheats of Earldoms fell to the King, or such as were granted out to hold of the King, but with particular Reservation to do Suit and Service before the King's Bailiff;

liff; becauſe it was neceſſary the Sheriff or Bailiff of the King ſhould have Suitors at the County-Court, that the Buſineſs there might be diſpatched; theſe Suitors are the *Pares* of the County-Court, and indeed the Judges of it, as the *Pares* were the Judges in every Court-Baron; and therefore the Sheriff or King's Bailiff having a Court before him, there muſt be *Pares* or Judges, and the Sheriff himſelf is not a Judge; and yet the Stile of the Court is, *Curia prima Comitat' E. C. Milit' Vic' Com' præd' tent' apud B. &c.* So it appears by that the Court was the Sheriff's by the old Feudal Conſtitutions; and yet the Lord was not the Judge, but the *Pares* only; ſo that even in a *Juſticies*, which was a Commiſſion to the Sheriff to hold Plea of more than was allowed by the natural Juriſdiction of a County-Court, the *Pares* only were Judges, and not the Sheriff; becauſe it was to hold Plea in the ſame Manner as they uſed to do in that Court. 6 Rep. 11, 12. 4 Inſt. 266.

Accord-

Spel. Rem. 50. Note; the Brittons, from whom King Alfred took many of his Laws, had his *Decemvirale judicium* long before. Vide LL. Hoeli Boni Sparsim.

According to the Constitution of *Alfred*, there were to be twelve at least of the *Pares Curiæ* of the County-Court, to give a Verdict; for if there were not twelve at least consenting in one and the same Sentence, the Plaintiff failed, and he could have no Judgment of the *Pares Curiæ*; and this was the Original of the *Decemvirale judicium* in *England*; but when the *Normans* brought in the Assize, before the Justices in Eyre, there it was necessary for the *Pares*, in the first Place, to view the Land, before they came to the Justices in Eyre to give their Verdict; and then if they all agreed, the Judge immediately took the Verdict; but if they could not agree, then he asked them the Reason of their Verdict; and if seven agreed, then there were five added *de afforciamento*; and this was the Practice in *Normandy*, as appears by *Terraine* 391, 292. *Old Customer*, *Ca.* 95. *fo.* 71. and in *England*, as appears by *Fleta* 64, *c.* 9. *fo.* 230. *Bract. lib.*

lib. 4. *Ca.* 19 to 185, and *Hale's Hiſt. Com. Law* 120, 261.

But it ſeems when theſe Jurors were added by Way of Afforciament, they likewiſe muſt have a View, becauſe they could not be properly ſtiled Recognitors, unleſs they ſpoke upon their own Knowledge; and therefore, when the original Recognitors of thoſe that came by Way of Afforciament, conſented in the ſame Verdict, Judgment was given; but if they did not conſent, then there was an Afforciament of more Jurors, till they had a Verdict of twelve, which was according to the ancient Policy of the *Engliſh* Law, by which Jurors were carried on till there was twelve conſenting in one Verdict.

But after the Juſtices in Eyre were diſuſed, and the Aſſizes were tried by the Juſtices of Aſſize, then it was impoſſible to carry on the Inqueſt by Way of Afforciament, becauſe the Juſtices of Aſſize only ſat *pro hac vice*; and therefore it became neceſ-

sary that twelve at least of the twenty-four returned should be impanelled to give the Verdict; and therefore the whole twelve were obliged to consent to the same Verdict.

Out of the *Pares Comitat'* one was chosen to be the Coroner, who recorded the Pleas of the Crown in the Torn, all Inquisitions of Felons of themselves, and People coming to an untimely End; and likewise all Outlawries; and these Coroners were in the Nature of Comptrollers to the Sheriff, keeping a Record of the Fines and Amerciaments in the Sheriff's Court; and therefore the Amerciaments in the Courts above were assessed according to the *Magna Charta*, *c.* 14. *Quod nullus Liber homo Amercietur nisi per Sac'rum Legalium homin'* (in the Manner mentioned *Tit.* Fines and Amerciments) and the Court gave Judgment, *quod sit in mi'a*; this was delivered to the Clerk of the Assize, and by him to the Coroner, who affeered such Amerciaments by the

Pares of the Court; and ſo anciently according to the ſame Statute, the Counties (*i. e.* Earldoms) and Baronies were affeered by their Peers in Parliament; and to that End I conceive Eſtreats of ſuch *Mi'a's* were ſent to the Clerk of the Parliament; but by an Order of the Houſe of Lords, theſe Amerciaments were reduced to a Certainty, that of a Duke 10 *l.* and Earl 5 *l.* and a Baron and Biſhop 5 Marks; ſo that by that Order Amerciaments becoming certain, there was no Occaſion of ſending them to the Houſe of Lords, as they did formerly; ſo the Coroners afterwards, in all Civil Actions, kept one certain Rule of Amerciament, which in Time grew to ſo inconſiderable a Sum, that they were not worth the affeering; but the Fine in Treſpaſs, which was impoſed by the Court, was ſo done without Affeerment; and was ſet as anciently it had been affeered at 6 *s.* 8. *d.* and is ſtill payed and allowed

to the Officer of the Court, who takes it as his own Fee.

But the *Mi'a's* are not affeered as formerly, nor allowed in any Bill; becauſe they cannot be levied without Affeerment, by the Statute of *Magna Charta*, which is not now worth while; but the Judgment is ſtill in *Miſericordia* as formerly, that the Court may order an Affeerement, if they think proper, becauſe the legal Conſequence is an Amerciament.

Theſe Amerciaments *per Pares* of the County-Court made up the *Corpus comitatûs*, and the Rents they payed to the Crown made the Sheriffs *Vicontiels*; for theſe the Sheriff gathered as Part of his own Farm, they being properly Rents that were anſwered to him as Sheriff, and were paid in when they did their Suit at his Court; and for theſe the Sheriff pays in his Profers.

See Hale of Sheriffs Accounts, p. 38, 39, 40.

Hence it is, that theſe Rents are called *auxilium vicecomitis* in *Cambridge*, *Cumberland*, *Eſſex*, *Leiceſter*, *North-*

Northampton, *Somerſet*, *Southampton*, *Wilts* and *Suſſex*; and *Auxilium ad Turnam Hundredi vicecomitis in Devonſhire*; *vis' franc' pleg'* in *Bedford*, *Bucks*, *Canterbury*, *Huntington*, *Eſſex*, *Hereford*, *Northampton*, *Somerſet*, *Southampton*, *Stafford*; and *Redditus ad Turnam Hundredi in Dorſet*, *Turnam vicecomitis* in *Eſſex* and *Hereford*; *Hundred Silver* in *Norfolk*, *Faith Silver* in *Stafford*; becauſe they did Fealty at the Time of Payment; *Panel Silver* in *Norfolk*, *Certum Letæ cum Capitagiis*, which was a certain Rent paid by the Sheriff to the King, upon the Leet's being taken out of the Torn, and to which the Tenants were contributary; and the Leet being taken from the Torn, ſuch Reſervations were made payable to the King as Part of the County Rents; and paid as ſuch to the Sheriff at his Torn; ſo Leet-Fee in *Suffolk*, Mote-Fee or Court-Fee in *Salop*; and being paid at the Time when they did their Suit at the Coun-

ty-Court, they called it *Suit Silver* in *Stafford*, and *Secta Burgi & Villag'* in *Cambridge*; and becauſe theſe were ancient Farms, that paid annual Profits to the Sheriff, before they were reduced to Rents, and made up his Farm to the King; therefore they were called *Certitudines* in *Berks*, *Hereford* and *Rutland*, *Certi redditus* in *Lincoln*, *Leiceſter*, *Somerſet*, *South'ton*, *Warwick* and *Wilts*, *certi redditus ad communem finem* in *Derby* and *Nottingham*; and becauſe ſeveral of theſe Rents were aſſeſſed according to each Quantity of their *Hydes* of Lands, compoſing them (each Hide containing 100 Acres,) *Spel. verbo Hide*, *Maddox Dialogo Sc'ii* 31. they were called *Hideage* in *Berks*, *Bedford*, *Bucks* and *Oxford*, and *Soken Fees* in *Suffolk*; ſome of them being reſerved in *Blanch Money*, *viz.* Money without Allay, and made 105 to the Hundred; they were called *Blanch* Farms in *Yorkſhire* and *Suffolk*, *Blanch* Rents in *Kent*, *Albus Servus* in *Dorſet*

Hydes. See Gale's 15. Script. Vol. 1. p. 560. and Note ib. p. 748.

set, *Servus* signifying anciently a Farm, *Spel. verbo Servus*, some of these Rents were called only Farms, as *Firma antiqua* in *Hunts*, *Firma & Feodo firma* in *Cambridge*, *Northumberland*, *Nottingham* and *Stafford*; also several held by Castleward of the King, and to do Suit and Service at the Sheriff's Court; and the Tallage of such Castleward belonging to the King was turned into Rents; such were *Secta ad warda* in *Bedford* and *Bucks*, *Ward Silver* in *Essex*; and as some of these Tallages, when turned into Rents, were reduced into a Certainty by an Inquest, and therefore called *redditus assizæ*; some other Rents were likewise paid annually to the Sheriff, such as Fines *pro Secto cur' relaxand'*, in *Bedford* and *Essex*, *Fines Aldermannos* in *Sussex*, *Præstatio, & pulchr' pl'itando* in *Bedford* and *Bucks*; these were *præstationes arentatæ*, and particularly excepted in the Statute of *Marlbridge*, for the Liberty of doing their Suit in the Sheriff's

Court, and not coming up to the King's Court; this seems to be a Payment, when first their Suit of Service was annexed to the County-Court.

See Hale of Sher. Acc. 33, 34.

The Sheriff took these Farms from the King, and was generally called *de Corpore Comitatus*; if he took them *de Cor' Com'*, he might account as a Bailiff; but if he took them at a certain Rent, they were called *de firma Comitat'*, 100 *l. Blanch de numero* 10 *l.* in the Farm, under the blank gross Sum, the Tenants that paid their Rents by the *Fee-Tail*, were separately reckoned up.

Crement' Com.'

Next to this comes the Rents called *Crementum Comitat'*, which was either

See ib. p. 36.

Crementum Comitatus, when receiv'd by the Sheriff as Bailiff, or *firma de crement' Comitat'*, when he farmed them to the King; these were several Farms that had been in particular Farms to the Sheriff, and thrown in afterwards into the *Corp' Com'*, that is, when the King had several Lands that held by Cornage or Castlegard, that were held

held by ſmall Rents, and to do Suit and Service in the County-Courts; becauſe the Rents were ſmall, they would not put them to the Trouble to come to the King's *Exchequer*.

The Profit of the County was likewiſe increaſed by Arentations of *Aſſarts*, *viz.*

When any one cut down the Groves and Trees in the Foreſt, and turned the Ground into plowed Land; for this he paid a Rent to the King, and was ordered to do Service at the County-Court, which was another Article that increaſed the *Crementum* of the County; and likewiſe if any Lands ſeized into the Hands of the Crown were not granted to any Body, but left in Charge with the Sheriff; this alſo, in old Times, increaſed the *Crementum Comitatus*.

When in the Account of the Sheriff they had wrote the Body of the County, and the Encreaſe of the County, then they brought in the Diſcount, which conſiſted of *Liberationes*,

Diſcharge. *Corp. Com*ˢ. See Hale ut ante & infra.

berationes, *Eleemosynæ constitutæ*, *&c.* the *Liberationes* were Payments of any of these Rents to such Persons to whom the King had granted them; and the *Eleemosynæ constitutæ* were Charities granted out of such Lands; the next were *Br'ia Regis*, being Summons's granted *pro hac vice* out of those Farms; these were Discounts paid out of the Body of the County.

As these Lands were sometimes charged in Perpetuity by the King, so they were likewise sometimes granted away; this the Sheriffs complained of, because it was expected from them that they should pay the old Rents to the King, tho' Part of the Lands were aliened from whence these Rents arose; but afterwards they were to account *de remanente firmæ Comitatus post terras datas*; so where there was a *Crement' Corporis Comitatus*, which was but in some Counties, and Part of them had likewise been aliened by the King, they accounted *de remanente Crementi corp' Comitat'*; and here

Hale 69, 70, 71.

here it is to be obſerved, that in the *Pipe* they kept a Roll apart, containing a particular Account of all the Seizures with which the Sheriff was charged, the Total of which came in as an *Item* in the Sheriff's general Account, which was called *remanentes firmæ Cm' poſt ſuam Summam*, (that is to ſay) ſuch Farms as were ſeized to the King, and which were charged to the Sheriff as remaining in his Hands; and this Sum was an *Item* placed after his Vicontiels, and hereof they kept a Roll on Purpoſe, as an extraordinary Charge.

I have before me a Series of the *Norfolk* Foreign Account, from the firſt of King *H.* 7. to the firſt of *Eliz.* The Title of the Account begins with the Time in which the firſt Seizures were made, and mentions the Year of the preſent Accountant, and who was the preceding, and who was the ſubſequent Sheriff, ſo that they are made up when the Sheriff is caſt out of Court; and the *Items* mentioned the Time and Cauſe of Seizure; and

at

at the End of each of them is written *remanen'*, which is as much as to say, the Sheriff has still those Lands in his Hands, and that they are not granted out of *&c.* Some of these Seizures are for Felony; others for Alienation of Lands holden *in Capite* without Licence; and others are Lands seized by the Escheator, and coming into the Hands of the Sheriff; and at the Conclusion of the said Account in every one of them, it is *Summa oneris* (mentioning the Sum) *Script' remanen' in Magno Rot'lo de anno in Itiner' Norfolk post summan suam.*

Profic' Com'. In the ancient Sheriffs Account he was charged *de proficuo Com'*, if he received them as Bailiff, or *de firma proficui Com'*, if he farmed them at a certain Rent: These consisted in the Profits of the Sheriff's Torns, County-Court, Fines and Amercements, Fines for the Game, Bloodshed, Assize of Bread and Beer; which anciently arose to a considerable Sum, the Profits of Hundred-Courts, Wapentakes, *&c.* which

in

in *H.* 3d's Time was very conſiderable; but as Buſineſs came into the King's Court, theſe *Proficua Comitat'* became very inconſiderable.

Next to theſe in the ancient Accounts were *Firmæ majores & minores*, which the King had turned from Proviſion in Kind to certain Rents payable at his *Exchequer*, and with Suit and Service to be done at his own Court; theſe were wrote in Charge on the Summons in the Pipe, which is a Summons in Words the ſame with that in the Green Wax, only different Matters are charged in it; this Summons was in Order to quicken the Tenants to pay in their Rents into the *Exchequer*, and take Tallies from thence; and if they were paid into the *Exchequer* by the Tenants, the Sheriff owed them on his Account; for if they ſhewed him their Tallies of Payment below, the Foils of which were likewiſe entred by the Chamberlains in their Books, and by the Clerk in his, that was a ſufficient Diſcharge of that

Firmæ Majores & Minores.

Sum

Sum to the Sheriff and Tenants alſo; but if the Tenants did not pay it into the *Exchequer*, but to the Sheriff, and the Sheriff *totted* it in his Account, the Tenant was diſcharged, and the Sheriff was charged with it, becauſe Payment to the King's Bailiff, who had Charge to receive it, was Payment to himſelf; but it was the Tenants Buſineſs to ſee that it was *totted* by the Sheriff, and to produce (if Occaſion) the Sheriff's Receipt to the Court to oblige him to *tott* it; if thro' the Tenant's Neglect it was *Nichil'd*, he was anciently obliged to pay it again, and had his Remedy over againſt the Sheriff by Commiſſions which the King anciently iſſued, as well as by Action; ſo that it was better for the Tenant to pay it into the *Exchequer*, according to his original Tenure, unleſs he could confide in the Sheriff.

N. B. That the Summons of the Pipe is the ſame with that of the Green Wax, as appears by *Gervas* of *Tilbury*,

Tilbury, *Maddox*, Dialog. 36. The Form of the Writ is in the black Book of the *Exchequer*, Lib. 2. *Qualiter fecerit ſummonitiones*, and which, as *Hale* ſays, continues to this Day.

Of the Farms of the County, and all other Farms wrote in the grand Roll, which is in Nature of the King's Rent-Roll of his whole Eſtate; in ſuch Roll the particular Rents which made up the Body of the County were ſet forth; but becauſe they after became very ſmall by Change of Money, and Releaſes to Tenants, therefore they omitted afterwards to charge them in particular, but put them in Groſs in *Corp' Comitat'*; and therefore in the great Roll in the *Exchequer*, which is without Date, the Farms that compoſe the *Corpus Comitat'* were wrote at large till the twelfth of *E.* 1. when the Clerks procured a Patent that they ſhould not be obliged to write out every Year each Particular of the *Corpus Comitat'*, but to write them on a ſeparate Roll one for all, which was

Firmæ Com'.

Madd. 655.

to be read to the Sheriff every Year on his Account.

Liberationes. The most Common of the *Liberationes*, or the Liveries, were the *Liberationes* to the *Comes* or Earl of the County; which seems to have risen on Escheats of such Earldoms to the King, so that many of those Shrievalties seemed to be composed of the Rent paid to the ancient Earls, with Suit to his Court in the County; and it seems afterwards to be the Policy of the Crown, never to give out such Earldoms as Feudal and Palatinate Jurisdictions; but the *Norman* Policy was to deliver such Counties to their Bailiffs, and for the Maintenance of the Splendour of the Earls, to give them one *third* of the Profits of the County Courts. Idem 651.

The Sheriff often gave Acquittances and Tallies to the Tenants, and yet *Nichil'd* them on the Account; and upon Complaint of the Tenants, the King often issued out Writs, whereby Inquisitions were taken, and what Persons

ſons the Sheriff had received Money from, which was *Nichil'd* at the *Exchequer*, and ſuch Tallies were produced to the Perſons impanelled; and if the Sheriffs were found Guilty they were attached. The Words of the Writ are *quod veritatem talliar' delictarum ſcil't inquirat, & ſi delictores talliarum fuerint attincti tunc Habeas Corpora eorum coram Baronibus, &c.* but for the more effectual Remedy of this Grievance, the Stat. *de Attinct.* was made 12 *E.* 2. which is, that when Sheriffs and other Miniſters being impleaded in the *Exchequer* for receiving the King's Debts by Tallies or Acquittances, and not acquitting the Party thereof in that Court, are ſo far gone in Plea, that the great Diſtreſs is returned againſt them; and if they come not then in to anſwer, then ſhall iſſue out another Diſtreſs, returnable at a certain Day, by which Writ Proclamation ſhall be made in full County, that the Defendants appear at the Day, and acquit

Madd. 670.

Wingate's Stat. Tit. Sher. 547.

the Debt for which he made such Tally or Acquittance; at which Day if he comes not, and the Writ be returned, and the Proclamation certified, he shall be held as Convict, and the Debt shall be taken of him as a Debt, recovered in the King's Court, and Damages shall be also awarded to the Plaintiff at the Discretion of the Barons. Howbeit, none shall be hindred by this Statute to complain of Sheriffs and other Ministers, when they shall be found in the *Exchequer*, to make them answer there as hath been formerly used.

Vern. 23. Considerations for regulating the Exchequer.

From the Roll of the preceding Year, and the *nova oblata* of Estreats, the Comptroller of the Pipe (having a Duplicate of the said Roll) made out the Pipe-Roll.

The Clerk of the Pipe anciently made the annual Roll, in which Summons the Sheriff was apposed anciently in open Court, and now by the Cursitor Baron, and he is said to be apposed, because the Court is to judge what he ought

ought to *apponere*; and before the Court, the Clerk of the Pipe takes down, what is *Nichil'd* by the Sheriff, and ſo does the Comptroller of the Pipe, and the Sums the Sheriff charges himſelf with, and the Comptroller of the Pipe makes out a ſecond Summons, which is in Nature of a *Levari*, againſt the Body, Goods and Lands, of the Debtor; but of this more hereafter.

About the Time of *E.* 1. there were ſeveral Tenants and Debtors that broke in the King's Debt, and indebted alſo to others of the King's Predeceſſors, and with theſe the annual Roll was ſtuffed, which made it neceſſary to the ſecond Remembrancer to write them out in Charge in the Prerogative Writ, which created an unneceſſary Trouble and Expence. Henceforward the deſperate Debts were to be taken out of the annual Roll, and it was not neceſſary for the Clerk to write them out to the Sheriff, but to put them into an exannual Roll, which was one Roll

of desperate Debts, which was never transcribed as the annual Roll was: This exannual Roll was read over to the Sheriff on his Appoſal, and chiefly at *Eaſter*, when the Proceſs iſſued out; and if he thought any of the deſperate Debts to be *Sperate*; they were tranſmitted to the annual Roll of that Year, and ſo writ out in Proceſs to him, and continued in Charge till they were got in, or again tranſmitted to the exannual Roll.

Reventio Caſualis.

Next to the *Firmæ Majores & Minores*, was the caſual Revenue, conſiſting of Debts of the King; and the firſt in Order on the Roll were the *Debita Atterminata*; theſe were the Debts to which the King by his Writ had aſſigned Terms or Times of Payment, and were the ſame with his other Farmers, which were at the *Utas* of *Eaſter* and *Michaelmas*; and theſe being paid in the Manner of Rents, were ſet next in Order to the Farms.

Atterminated Debts.

Theſe

These Payments of atterminated Debts were on large Fines set, and Amerciaments affeered *secundum qualitatem delicti & quantitat' Contenementi*, the Statute of *Magna Charta* having provided *quòd Liber homo non amercietur pro parvo delicto nisi secundum Magnitudinem delicti, salvo sibi Contenemento suo*; and the Reason of the Statute was, that they would not have the Feud forfeited for lesser Trespasses, as it was in Treason and Felony; and it would have amounted to a Forfeiture of the Feud, if Amerciaments and Fines were so large that they could not be paid out of the Person's Estate, without Process for the Sale of the same; and therefore when they estreated Fines and Amerciaments, which anciently were very large, Writs issued to the Court of *Exchequer* to atterminate such Debts, and to issue an Inquisition, to inquire *quantum inde Regi dare valeat per Ann', salva Sustentatione sua & Uxoris & Liberorum suorum*; and ac- Mag. Char. c. 14.

cordingly such Debts were reduced into annual Payments, according to the annual Value of the Freehold, that the King's Debtor was seized of; this was called an *Estallment*, which is an Assizing or Establishing the Times of Payments of such Debtors.

Estallments.

Thence common Persons were used to give Time of Payment to their Debtors; and thence arose the *Solvend'* in common Bonds, and the Notion of *debit' in præsenti solvend' in futuro*, by this means drawn over to our Use from the *Civil Law*.

Madd. 678, 679.

When the Debts were thus attermined, if they were not paid at the Time, the whole was levied, because that when the Debts were atterminated, it was according to the Contenement of the Party; and if he did not pay it according to the Attermination, he plainly endeavoured to avoid the Justice of the Law; and therefore the whole was immediately to be levied as upon an insolvent Tenant.

Next

Next to the Atterminated Debts were the great Debts and known Debts; and among these were the respited Debts, which being generally the Oldest came the next on the Roll; these were anciently respited by the King's Writ, which gave Authority to the Court to delay their Payment, and so sometimes respited by the proper Authority of the Court; for as the Court might atterminate by the Statute of *Magna Charta*, so also they might *respite*, which is no more than giving Time of Payment; and this they often did, when they were doubtful whether such Debts ought to be paid or not, as where Payment had been made to the Sheriff below, which the Sheriff had not *totted*, or on shewing other good Cause, they respited such Debts till the King's Pleasure was known. Respited Debts. Madd. 655.

Next to these were *Nova oblata*, being the Debts estreated since the making up the last Year's Roll; these Debts bound the Lands and Tenements of the Debtor from the Time they Nova oblata.

were of Record, *viz.* the Fines and Amerciaments from the Time they were imposed in a Court of Record, so that any Person, going to the *Rotulus Magnus*, might know how far each Person was indebted to the King, unless in Estreats for one Year past, for which they were to search the Records of the other Courts; and the Recognizances taken for the King in his other Courts were wont to be estreated into the *Exchequer*, in Order, when forfeited, that Process might issue on them.

Dallison 11. Recognizances.

No Recognizances were taken to the King by the ancient Conservators of the Peace, nor by the Sheriffs, nor Constables; but in Cases where the Defendants were Bailable, the Sheriff or Constable took an Obligation in his own Name, but not any Recognizance to the King; but the Sheriff himself bailed to appear at his own Torn, and the Constable to appear at the View of Frank-Pledge: By the Stat. 18 *E.* 3. *c.* 2. 24 *Ed.* 3. *c.* 61.

Justices

Juſtices of the Peace were eſtabliſhed to be appointed by the Commiſſion of the King; and theſe were found ſo uſeful, that in a ſhort Time the Name and Office of the Conſervators of the Peace vaniſhed; and thoſe by the 3 *H.* 7. *c.* 3. bailed by *Recognizance* taken to the King, to appear at the Quarter-Seſſions; and ſince 1 *E.* 4. *c.* 44. all Indictments and Preſentments, at Leets and Torns, are to be certified to the Quarter-Seſſions.

Thoſe Obligations taken by the Conſtables are not now in Uſe, and the Juſtices now take Bail, by Recognizance to the King.

Theſe Recognizances being only perſonal Securities, it became a Doubt, when they began to bind the Lands of the Subject. Bro. Prerog. 71.

Vide hic, c. 6.

Theſe Recognizances are tranſmitted, whether forfeited or not, all Recognizances for Appearances ought to be tranſmitted as forfeited, becauſe it belongs to the Court (below) to know whether they appeared or not; for a Re-

cognizance being a Debt to the King under a Condition, does not become an absolute Debt till it is forfeited; and therefore when it lies in any other Court, it ought not to be estreated, till it appears, by the Acts of that Court, whether it is forfeited or not; therefore if a Recognizance be given for an Appearance at the Sessions or Assizes, and the Party upon being called does not appear, that Recognizance ought to be estreated, because it appears by the Acts of the Court, that the Condition is broken.

But if a Man be bound to appear at the Sessions, and in the mean Time to keep the Peace, or be of good Behaviour, and he break the Peace in the mean Time; if he appear, he ought to be indicted and found guilty before his Recognizance be estreated; for his Recognizance cannot be estreated *quia non comparuit*; and therefore there must, upon the Record of the Court, a Breach of the Peace appear, which cannot be, unless he be found

Guilty

Guilty on an Indictment; and therefore if it be estreated before, such Estreat is irregular; but there may be Recognizances taken to the King upon other Conditions than that of appearing in Courts of Justices, and then the Condition may appear to be forfeited; and if so, the Process must go out of the *Exchequer*; and formerly they held that such Recognizance did not bind the Lands of the Subject, till they were returned of Record; but by 33 *H.* 8. *c.* 39. it is ordered, that such Debts should bind as Statute Staple; for since these and Statutes Merchants were allowed, by former Statutes, to bind the Lands and Tenements from the Time of making them, though contracted in private, and not of Record, they thought it reasonable the King should have the same Privilege as private Persons; since the King's Recognizances, though taken before Justices, are to be returned of Record the next Quarter-Sessions; and after they are become forfeited, they 21 E. 4. 21.

are

are eſtreated by the Seſſions into the *Exchequer*.

And ſince Recognizances were taken, both in the Court of the *King's Bench*, and *Common Pleas*, and *Chancery*, which do not appear on the *Rotulus Magnus*, till they are forfeited and eſtreated into the *Exchequer*; yet that being of Courſe done in a ſhort Time, there did little Prejudice accrue to the Subject, by not ſeeing the whole Charge of the King's Debt on the *Rotulus Magnus*.

And when ſuch Recognizance or Bond is returned into the Court of *Exchequer*, if there be a Warrant of Attorney to confeſs Judgment, Judgment is immediately confeſſed to the King, and on ſuch Judgment the Proceſs iſſues, as on other ordinary Judgments of the King; but if there be no Warrant, then a *Scire facias* iſſues, and the King has Judgment on the *Scire facias* or 2 *Nichils Returned*.

All Courts of Record, where the Fines are not granted away by Letters Patent,

Patent, tranſmit their Eſtreats to the Lord Treaſurer's Remembrancer's Office; and theſe, with thoſe Fines and Amerciaments that are impoſed in the *Exchequer*, in the King's *Remembrancer's Office*, and Clerk of the *Pleas Office*, were delivered to the Clerk of the *Pipe* formerly, who put them amongſt the *nova oblata* on the great Roll.

But towards the Reign of *Ed.* 3. the caſual Revenue being ſo much increaſed, that the Clerk of the *Pipe* could not tranſcribe and ingroſs them all on his Annual Roll, and many of them being ſmall and paid on the firſt Demand, it was neceſſary to make them Part of an Annual Charge in the ſame Manner as the other Annual Revenue of the King was; therefore a new Officer was invented, *viz.* the Clerk of the Eſtreats; and inſtead of delivering ſuch Eſtreats of the *Exchequer* and other Courts, to the Clerk of the *Pipe*, it was henceforward delivered to him, and he iſſues a Diſtinct

Clerk of the Eſtreats.

ſtinct Proceſs from the Summons of *Pipe*, *viz.* the Summons of the *Green Wax*, which though it be almoſt in the ſame Words with the Summons of the *Pipe*, yet it is different in the Charge; for the caſual Revenue is only charged in the Summons of the *Green Wax*.

And Foreign Appoſer.

There was likewiſe a new Officer, before whom the Sheriff was to account on his Proceſs, who is called the Foreign Appoſer; perhaps he was called foreign, becauſe he was Appoſer in Court, or rather becauſe this was a foreign and diſtinct Account from that of the Great Roll, which was carried on by itſelf; the foreign Appoſer ſends the Debts *Nichil'd* by the Sheriff, to the Clerk of the *Pipe*, which then being preſumed to be Debts that will ſtand out ſome Time, are by him entred on the Great Roll, and he ſends out the ſecond Proceſs of the *Pipe*; becauſe having already been on Proceſs on the Summons of the *Green Wax*, it has anſwered *Mag-*

na Charta, *c.* 8. by which no Sheriff or Bailiff ſhall ſeize Lands for the King's Debts, ſo long as the preſent Goods and Chattels of the Defendant ſhall ſuffice, and the Debtor be ready to ſatisfy the ſame; and the Pledges of the Debtor ſhall not be diſtrained, as long as the principal Debtor ſhall be ſufficient.

In *Ireland*, inſtead of the Clerks of the *Pipe* and Eſtreats, they have an Officer, who makes out the firſt Proceſs, whom they call the *Summonitor*; and he receives the Anſwer of the Sheriff in Court, as the Clerk of the *Pipe* likewiſe; and the *Nichils* are to be entred on the Great Roll, and the Comptroller of the *Pipe*, who has a Duplicate of that Roll, iſſues out the ſecond Proceſs of the *Pipe*, and then they proceed as in *England*.

CHAP.

CHAP. VI.

Of Debts to the King, how recovered, &c.

ALL Debts to the King bind from the Time the same are contracted; for the Debts that were of Record always bound the Lands and Tenements, and the Debts not of Record, by the 33 *H.* 8. 39. bind as a Statute Staple; for all Lands being held mediately or immediately from the King, when therefore any Debt was recorded of any Person, it laid the Estate as liable to such Debt, as if it had been a Reservation on the first Patent; and therefore as the King could seize for the Non-payment of the reserved Rents, so he could seize the Lands for any Debt with which the Lands were charged; but the Lord giving out any Tenure for Knt.'s Service

Service or other Service, could not ſeize for the Non-performance of ſuch Service, as they did amongſt foreign *Feudiſts*, becauſe the King had an Intereſt in ſuch Service; for ſince the Baron was to come, attended with ſo many Knights, the King had an Intereſt in the Vaſſals who were to attend him; and therefore Lords were not permitted to ſeize the Feuds of their Tenants, but to diſtrain them for the Service reſerved; in the ſame Manner, if a Debt was recovered by the Lord in his Court-Baron, he could only order the Bailiff to levy that Debt by Diſtreſs; but he had not the ſame Remedy for the Debt recovered in his Court, as he had for the Rent annexed to the Land; and therefore as the King, who had the eminent Dominion, could ſeize for the Non-performance of the Tenure, as the Lord of the *Feud* had by the *Feudal* Law; ſo whenever he had charged a Debt on his Tenant, he had the ſame Remedy as on an original Reſervation;

and therefore the King having a Right to ſeize for the Reſervation, had likewiſe a Right to ſeize for the Debt; but the Lords having no more than a Right to levy on the Goods, and not a Right to ſeize the Land itſelf, the Debt to the Lord did not bind the Land, as the Debt of the King did, which ſubjected the Lands to a Seizure from the Time it was on Record: But Goods were bound at Common Law from the Teſt of the Writ, whether it was a *Levari* or a *Fieri facias*, becauſe otherwiſe the Debtors by Alienation of the Chattels might diſappoint the Executions of their Lords; who having by their Proceſs a Right to diſtrain Goods, there aroſe a Lien on the Goods from the Time the *Levari* was taken out; and the King's Prerogative could not be leſs than the Right of the Subject, and therefore bound the Goods from the Teſte of the Writ; but this was found inconvenient; and therefore by the 29 *C.* 2. *cap.* 3. No Execution ſhall bind the Pro-

Property of Goods, but from the Time of the Delivery of the Writ to the Sheriff. Vide *Tit. Execution, fol. 99. c. 4.*

But this Act seems not to extend to the King, for an Extent of a later Teste superseds an Execution of the Goods by a former Writ; because by the King's Prerogative at Common Law, if there had been an Execution at the Subject's Suit, and afterwards an Extent, the Execution was superseded, till the Extent was executed; because the Publick ought to be preferred to the private Property; and the rather because the King is supposed by publick Business, not to be able to take Care of every private Affair relating to his Revenue, and therefore no Time occurs to the King; and if he was to be prevented of his Execution, by another Person coming in before him, Laches must be imputed to him, which the Law does not allow; and since the King's Debt is prefer'd in the Execution, therefore an Executor is ob- 5 Mod. 377.

liged by the Law to pay the King's Debt on Record, before Debt on Record to a Subject.

If the King's Debt be *prior* on Record, it binds the Lands of the Debtor, into whose Hands soever they come; because it is in the Nature of an original *Feudal* Charge on the Land it self, and therefore must subject every Body that claims under it; but if the Lands were aliened in Whole or in Part, as by granting a Jointure before the Debt contracted, such Alienee claims *prior* to the Charge and therefore it is not subject to it.

Mo. 126.

But if the Subject's Debt be Statute Staple or Judgment, and *prior* to the King's Debt, and the King first extends the Lands, the Subject shall not by any after Extent take them out of his hands; but if such Judgment be extended, and the Subject has the Possession delivered to him by a *Liberate*, he shall hold it discharged from the King's Debts; but if the King's Extent comes before the Possession by *Liberate*,

Curson's Case, 3 Leon. 239, 240. 4 idem 10. 2 Roll. 156, 7, 8.

Liberate, the King's Extent ſhall be preferred, and the Subject muſt wait till the King's Debt be ſatisfied; the Reaſon is, becauſe the King's Debt is in Nature of a *Feudal* Charge, which if it comes on the Lands before the Property of them is altered, it ſeizes them as it might for the original Service at firſt impoſed; but if there had been a lawful Alienation of them before ſuch Debt, there it is not the *Feud* of the Tenant, and therefore ſuch Charge cannot affect it; therefore if there was a precedent Judgment or Statute Staple, and *Liberate* purſuant before the King's Extent comes down, there it cannot charge the Lands; becauſe the Property is altered by the Extent of the Subject, which relates to the Time the Judgment was firſt given, or Statute Staple acknowledged; becauſe ſuch Extent or *Liberate* of the Subject was only an Execution of ſuch Judgment or Statute on the Land, and the Execution was relative to that Judgment which was *prior* to the

King's Charge; and ſo there was a compleat Alteration of Property, *prior* to the King's Charge before his Extent came down; but if the King's Extent had come before the *Liberate*, he thereby charged the Lands whilſt they were in the Hands of his Debtor, and then this Charge would be ſatisfied, as if it had been in the firſt *Feudal* Donation; for nothing can hinder the King's Charge which comes on the Lands, as if it had been ſettled in the firſt *Feudal* Donation, but what amounts to a precedent Alienation, in which Caſe they are not the Lands of the Debtor; and the *Feudal* Charge is only laid on the Lands of the Debtor; and if ſuch Lands were not his Debtor's Lands, they are not ſubject to that Charge; and a *Liberate*, in Purſuance to a precedent Judment, amounts to an Alienation of the Land itſelf, before it became charged to the King.

Note alſo; the Lien upon the Lands of the Subject's Debts came in by the Statute

Statute of *Weſt.* 2. for before that, the Judgment did not bind the Land; but the King's Debt bound the Land before the Statute, but the Statute does not touch the K.'s Prerogative; and therefore the K. has a Power to levy on the Lands, notwithſtanding the preceding Lien by Judgment, whilſt the Lands are in the Cuſtody of the Law on the *Elegit*, or Extent, before they are actually delivered out to the Officer by the *Liberate*, as a Satisfaction for his Debt; but when they were actually delivered out to the Officer by the *Liberate*, they then no longer belong to the Debtor, ſince the King's Writ had delivered them over for Satisfaction of a Debt, that was preceding to the King's; for the Creditor did not take them under the Burden of the King's Debt, becauſe his Lien was antecedent to the King's Debt; and it were repugnant to conſtrue him to take the Land *ſub onere* of the King's Debt, when he took it in Satisfaction of a Debt precedent.

See Mr. Strange's Argument in Gilbert's Reports, p. 97.

Curson's Case, 3 Leon. 239, 240. 4 Idem 10.

If a Judgment be owing by *A.* to *B.* and *A.* afterwards enfeoffs *C.* of his Lands, and then *B.* assigns his Judgment to the King, in this Case the King shall extend but a Moiety of the Lands in the Hands of *C.* but if *B.* had assigned the Judgment to the King before *A.* had enfeoffed *C.* the whole Lands had been lyable; for the King has the Prerogative to extend the whole Lands of the Debtor for his Debt; but the Feoffment being made to *C.* before the Assignment of the Judgment to the King, the Lands of which *C.* was enfeoffed, were never the Lands of the Debtor; for they were the Lands of *C.* before *A.* became indebted to the King; and therefore the Prerogative of the King, which makes it a *Feudal* Charge, never affected those Lands; but they are subject to the same Lien to which they were when it was only the Debt of *B.*

Magn. Rot.

The great Roll consisted of the Particulars herein before mentioned, and was

was made up by the Clerk of the Office, upon the Sheriffs bringing in their Accounts, the new Sheriffs were constituted in *Michaelmas* Term, and in *Hillary* issued the first Summons of the *Pipe* and of the *Green Wax*; those contained the *Corpus Comitat'*, and the Farms that were in Arrear the former Year; and the *Green Wax* contained the Casualties that had been estreated before *Hillary* Term, and on these Writs the Sheriff answered to each Article, given him in Charge on the rest of these Writs at the *Utas* of *Easter*, and the Answer of each Sheriff was writ down on a (distinct) Roll, and these Rolls pack'd together made the Roll of that Year; so that the the Rolls ran in the Words of the present Tense, because the Sheriff did not render the Account which was marked *R. C.* or *C. R.* upon each Particular charged in the Writs; so that on the first Writ he accounted for the *Oblata* of the preceding Year; but the *Nova oblata* did not come on

the great Roll till the *Utas* of *Michaelmas*, becauſe the Sheriff did not anſwer in Court, touching theſe *Oblata*, till the ſecond Proceſs; but the foreign Appoſer touching and caſting up what was *totted*, ſent it to the *Pipe*, and a Schedule was made of what was *Nichil'd*, and is called *Schedula Pipæ*; and this was tranſcribed by the ſecond Remembrancer in his Book, which was alſo called *Schedula Pipæ*; and from hence the ſecond Summons of the Pipe was made, and on the Return of the ſecond Summons, the Sheriff was to anſwer to the *Nova oblata* of his own Year.

Towards the Time of *H.* 7. and *H.* 8. as the Revenue increaſed, Merchants were obliged to make Payments, the Cuſtomers and Collectors received Bonds from the Parties to the King; theſe Collectors were no more than Bailiffs or Receivers, and not as Juſtices between the King and the Party, and therefore the Acknowledgments before them were not in a Court

Court of Record; and there was before the 33 *H.* 8. *c.* 39. a Difference between them and Bonds, that these were immediately levied by the *Levari*; but these Debts not of Record, could not be levied by a *Levari*, but a *Sci' fac'* was to issue thereupon; and the Reason of the Difference is, that where an Obligation is acknowledged in a Court of Record, such Recognizance is the same as a Judgment, the Conusor is personally present, the Court is supposed to know him as such a Defendant, against whom they give Judgment; and hence it is that the *Levari* issues, and all the other Prerogative Process; and that Debt cannot be discharged, until there be a Receipt upon the Record; but where the King's ministerial Officer takes an Obligation to the King, such Obligation is not of Record; and when the Officer delivers such Obligation into Court, the Time of the Delivery is recorded; so that if that Obligation be just, and the Conusor hath

hath nothing to say against it, no Body can controvert the Time of his Lien, because the Delivery is of Record; and therefore it ought to bind from that Time.

But the Obligation is no more than a Warrant of Attorney, for the Ministerial or other Persons to declare it of Record; for being an Act in *Païs* and not of Record, the Conusor may come in upon the Return of the *Sci' fac'*, and traverse the Obligation; but in this it differs from a Warrant of Attorney; for if a Man forge a Bond and Warrant of Attorney, and then confesses Judgment, the Defendant can never deny the Deed, if a *Sci' fac'* issues after a Year and a Day; but in this Case there was no Judgment upon the Bond; for the Bond is only delivered of Record, and therefore the Judgment upon the Bond arises only upon the *Sci' fac'*; and therefore in *Ireland*, they often take a Warrant of Attorney to confess Judgment upon such Bond in an Action of Debt; and when such Judg-

ment

ment is entred, it is a Matter of Record, and cannot be discharged but by an Act of equal Notoriety; and the Practice here in *England* before the 33 *H.* 8. *c.* 39. was the same with the *Irish* Practice, (where that Statute is not in Force) and is therefore here proper to be recited.

When the Solicitor for the Crown had Directions to sue upon the Bond, only he lodges the Bond in the chief Remembrancer's Office, and immediately a *Sci' fac'* issues thereon, either to the proper County, or two *Sci' fac'* to the City of *Dublin*, which are called first and *alias Sci' fac'*; all this is done of Course; if the Sheriff returns *Scir' feci* thereon, then upon filing it, the Court gives the Party twelve Days to plead by entring three Rules *viz.* four Days to plead, four Days *ex gra'*, and four Days *ex uber' gra'*, the last of which is only moved in Court, and is for Judgment *absq;* Motion, if no Plea in four running Days; and if the Party does not plead within

in the Time, a *Levari fac'* issues for the full Penalty of the Bond.

If the Party pleads, then the like Trial and Proceedings as in other Courts.

If the Sheriff returns two *Nichils*, then upon Motion the Court gives but four Days peremptorily for the Party to appear and plead; which if he neglects to do, a *Levari facias* issues as above.

The Judgments in both these Cases are made up as Judgments by Default at Law, and the Form of the *Sci' fac'* is.

Georgius Dei gratia Magnæ Britan' Franc', & Hibern' Rex, fidei Defensor, &c. Vic' Com' Civit' Dublin sal'tem. Cum Johann' Walker & Chamberlain Walker, alias *John Walker* of *Ginteen* in the County of *Kilkenny*, Esq; and *Chamberlain Walker* of the City of *Dublin*, Esq; *per Script' eor' obligator' geren' dat' octavo Die Martii Anno Domini* 1714. *Sigill' sui' sigillat', & fact. apud Civit' Dublin*

lin in Paroch' Sanct' Mich' Arch'i in Ward' Sanct' Mich' in Com' ejuſdem Civit', & in Offic' capit' Rem' noſtri Sc'ii in Hibernia jam remanen' de record' tenentur nobis in ſum' Ducent' & Septuagint', & Sex Libr' Ster' ſolvend' ad certum diem jam præterit', & eas nobis nondum ſolver' nec alter eor' ſolvit nec ſolvi fec', ut dicitur: noſque de dict' Ducent' Septuagint' & Sex Lib' Ster' nobis jam debit' omni celeritat' qua poter' ſatisfacer' volent', ut eſt juſt', vobis igitur nunc præcipimu' quod non omit' propter aliquem Libertat' in Ball' veſtra quin eam ingred', & per probos & legal' hom' de Ball' veſtra Scir' fac' Johan' Walker & Chamberl' Walker quod ſint cor' Baronibus de Sc'io noſtro apud the King's Court *Dublin -----prox' futur' ad Oſtend' & propon', ſiquid pro ſe habeant vel dicere ſciant, quare nos Execution' verſus eos pro præd' Ducent' & Septuagint' & Sex Libr' Sterl' h'ere non debemus; & h'eat' ibi tunc nomina eor' per quos eis Scir' fac'*

fac' & hoc breve. T. Jeffer' Gilbert Arm' Cap. Baron' Scaccarii nostri præd' apud le King's Court præd' die anno regni nostri quart'.

Temple Regist' Regis.

If a Bond with a Warrant of Attorney be entred into, the Warrant is brought to the Officer, who enters a Consent in his Book of Judgments, that Judgment be forthwith entred up for his Majesty, and that Execution may issue; in this Case there is a *Scire fac'* made out, signed by the Officer, and filed, but never sealed, which is first inrolled, and is in the Nature of a Declaration at Common Law, and the Judgment made up as those in the Plea Side by *Cognovit Action'*, because they would not stay the Return of the *Scire facias* to Delay the King's Execution, nor clog the Rolls with two Writs, and two Returns from the Sheriff; but when Judgment is given in Debt, there may be a *Levari* immediately, because

becauſe it is an immediate Execution of the King's Judgment; and the taking out *Scire facias* proceeds from Ignorance of the Clerks in taking out ſuch *Scire facias*, as if only a Bond had been ſued, and there had been no Warrant of Attorney to enter Judgment.

But with us thoſe things are ſet upon another Foot; for the Bonds in *Pais* are by 33 *H.* 8. *c.* 39. made Statute Staples, and therefore the Lien is from the Time of the Acknowledgment; and the *Levari* may at any Time iſſue, within a Year after the Day that the Money in the Obligation is payable; but if they exceed the Year, then there muſt be a *Scire facias* as in the Caſe of Common Statute Staples; and the Reaſon why they were in the Statute made in the Nature of Statute Staples, is becauſe they were Pocket Securities when taken by the Officer, who is not a Perſon authorized to make them of Record; but that the King's Revenue might not ſuffer

by the Negligence of the Officer in bringing them up to enter of Record, they were Liens upon the Estate from the Time they were taken by such Officer, and they thought it reasonable to make Pocket Securities to be Liens upon a Man' Estate, as well in Behalf of the King's Revenue, as in Behalf of a Merchant.

CHAP VII.

The Duty *of the several* Courts *and their* Officers, *with Respect to* Estreats *into the* Exchequer, *and first of the* Chancery.

Bur. of the Exch. 148.

THE King's Chancellor for the Time being, causes the Clerks of the Chancery, to whom it doth appertain, to inroll, or cause to be inrolled

2 distinctly,

distinctly, and plenarily, in the Patent Rolls of the Chancery, all and singular Charters, Letters Patent, Writs Patent, Writs Close, Commissions, Licences and Pardons of Alienations, Licences, *Ouster le mains*, Writs of *Diem clausit extremum*, *Man' amoveas*, *Qui plur'*, and all and singular other Writs, Acts and Instruments which pass under the Broad Seal, whereby any Farms, Fee-Farms, Rents, Services, Debts, Accounts, Fines, petit or gross Issues, or Amerciaments, Homages, Fealties, or Relief, Reventions, or other Profits or Commodities, are reserved or may accrue to the King's Majesty, before the same Charters, Letters Patents, or other the Premisses shall be delivered out of the Hanaper of the said Chancery.

Then the Master of the Rolls yearly, from Time to Time, transmits in Estreats of Parchment Prest Writ, in a conform Measure, and of one Size, written on the one Side only, all and singular the said Charters, Letters Patents, Madd. 707, 708.

Writs and other the Premiſſes out of the ſaid Patent Rolls, and the ſame Eſtreats the ſaid Chancellor, or the ſaid Maſter of the Rolls for the Time being, ſhall deliver in their own Perſons Yearly to the Barons of the *Exchequer*, in the Terms of *Michaelmas* and *Eaſter*, for Execution and Proceſs to be had and made thereupon for the King.

After the Receipt of the Eſtreats of Chancery by the Hands of the Chancellor, or Maſter or Keeper of the Rolls, the chief Remembrancer of the Exchequer ſhall take the ſame Eſtreats by the Delivery of the ſaid Barons, and ſhall number the Number of the Preſts of the ſame, and ſhall endorſe the laſt of them in this Manner; *Hunc librum ſive Rot'lum continen' Membran' . . . . . liberavit hic:* A. B. . . . . *Cancellar' Domini Regis . . . . . Die . . . . Anno Regni ejuſdem Domini Regis . . . . pro Execution' inde ad opus Domini Regis Fiend'.*

And

And after that he ſhall File, and ſtrictly bind all the ſaid Preſts together in one Head, with a good Sirple or Ferrel of Parchment; and then he ſhall mark every Roll thereof with Numbers, *viz.* I. II. III. and ſo forth, in every Roll of the ſame Eſtreats wherein any Matter doth commence, and is not depending wholly upon the preceding; and then he ſhall indorſe the ſaid Sirple in this Manner and Form, *ſcilt.* ..... *Originali de Anno* ..... *Regis nunc, &c.* and ſign it with *his Name.*

Theſe Originals were the old Baſis and Foundation of the Proceſs of the Court of Exchequer; and as the Original Writs in the Court of Chancery directed into the Common Pleas were the Foundation of all the Civil Buſineſs; ſo the Originals out of Chancery were the great Foundation of the K.'s Court of Revenue in the Exchequer, and this Roll was to be a Charge to the Sheriffs and Eſcheators for that Year; and immediately upon this Roll there

was Process made out for the getting in all Manner of Debts and Duties contained in the same.

This is the Way of Dealing with the Executory Part of the Revenue; for they did not transcribe that upon the *Rot'lus Magnus*, because it was no Part of the Standing Revenue, and therefore the Roll was made by the King's Remembrancer from the Estreats of the Chancery, and Writs were to issue to the several Officers to get in the Revenue, but the Writs themselves were made out of the Remembrancer's Office upon the Roll, and upon these Writs the Sheriff answers in open Court before the Barons, and the Escheators before a Baron and an Auditor.

See the Case of the Warden and Commonalty of Sadlers, 4 Co. 54, 55, &c. and 10 Co. 115.

There were two Sorts of Offices, one of *Intituling*, and another of *Instruction*. The Office of Intituling was always by Inquisition found by Commission under the Broad Seal, for the King could not take but by Matter of Record, no more than he could give

give without Matter of Record; and this was a Part of the Liberty of *England*, that the King's Officers might not enter upon any other Man's Poſſeſſion till the Jury had found the King's Title; therefore where the King's Title appeared of Record, his Officers might enter without any Office found. As where the Lands are held of the Crown, and the Tenant dies without Heirs, the Officers of the King may enter, becauſe the Tenure is upon Record whereby the King's Title appears; ſo by the Common Law, where the Land belonged to no Body, the King's Officers may enter, becauſe by the Law the Land is in the Crown, for the Law intitles the King where the Property is in no Man; but if any Body elſe is in Poſſeſſion, the Lands cannot be deveſted without Matter of Record, and where the King is intitled by Matter of Record, there is no need of any Office to intitle him.

The Offices of Instruction settled the Annual Value of Lands, and by that Value the Escheator accounted, unless the Court, by putting it up to Auction, found any Person that would give more for the Land, and then they let it by Lease under the Exchequer Seal.

But by the Statute 1 *H.* 8. *c.* 10. if any Body will pretend Title, and come in and traverse the Office, and find good Securities, then he shall have the Lease of the same Lands.

Brevia Scaccarii. This begat the usual Process in Seizure of Goods; for when the Officer had seized, if the Port be not One hundred Miles distant from Town, he is to take out a Writ of Appraisement in fourteen Days, and on this Writ of Appraisement they return the Value of the Goods, as it is found by the Jury; but upon the Return of the Writ of Appraisement the Goods are set up to Cant, lest they should not be appraised according to the true Value; and if any Claim were put in, and the

the Goods were unsold, the Claimer was permitted to have a Writ of Delivery, upon giving Security to answer the Value of the Goods. And thus the Practice touching personal Things is conformable to the ancient Practice touching real Estates.

CHAP. VIII.

We now come to the Casual Revenue.

AND that arose out of Fines and Amerciaments. The Fines were properly set in Criminal Proceedings, and were estreated by the *King's Bench* and *Justices in Eyre* into the *Exchequer*; the Fines were set by the Court as Ransoms from Imprisonments, and the Amerciaments by *Mag. Charta* were to be affeered, and these were to be set in the *Common Pleas*

See Cotton's Records, p. 15, 40, 86, &c. infra.

in Civil Actions, either on the Plaintiff for false Clamour, or on the Defendant for detaining a just Debt; these Amerciaments were delivered over by the Clerk of the Warrants to the Clerk of the Assizes, who used to deliver them to the Coroners of the County, who affeered such Amerciaments as indifferent Persons of the Neighbourhood elected by the whole County; and after the Coroners had affeered such Amerciaments, they delivered them back to the Clerk of the Assize, and he delivered them to the Clerk of the Warrants, and from thence they were *estreated by the Judges into the Exchequer:* But the Judges of the *King's Bench* having a Civil Jurisdiction over their Prisoners, they were wont to order Amerciaments, and sent them down to be affeered; and so the *Common Pleas* in Actions of Trespass, which were *Vi & Armis*, set Fines on such Trespassers, which were estreated into the *Exchequer* without any Affeerment.

See Cotton supra, p. 86, 112, 127, &c.

But from the Time that Juſtices of the Peace were appointed, the caſual Revenue very much increaſed; and this was by 1 *E.* 3. *c.* 16. before that Time Indictments were found at the *Torn* before the Sheriff, and he iſſued his *Capias*; but after the Juſtices of Peace were appointed, the Juſtices iſſued their Warrants in Order to apprehend the Offender; for being aſſigned to keep the Peace in each Particular County, they could iſſue their Warrants in order to take up an Offender; and if it were a Bailable Offender, they bound him over by Recognizance, either to appear at the Aſſizes or Quarter-Seſſions, and likewiſe bound over the Evidence to proſecute; and if the Proſecuted or Proſecutor did not appear, ſuch Recognizance was forfeited, and the Clerk of the Seſſions, or the Peace, reſpectively, eſtreated ſuch Recognizance into the *Exchequer*.

This ſo increaſed the Caſual Revenue, that the *Comptroller* of the *Pipe* could

could not undergo the whole Work; and therefore a new officer, intitled the *Clerk* of *Estreats*, was introduced to write the Summons of the *Green Wax*, in Assistance of the *Comptroller* of the *Pipe*; so that the Summons of the *Green Wax* was *totidem verbis* with the Summons of the *Pipe*, only issued by a different Officer, and the Charge of the casual Revenue is annexed to such Summons of the *Green Wax*.

When it issues to the Sheriff, the Sheriff is to levy the same; and the Sheriff, upon his Process of the *Green Wax*, is to account before the foreign Apposer, which foreign *Apposer* was instituted at the same Time with the Clerk of the Estreats; he was called *Apposer* for the same Reason that such Accounts of the Sheriffs are called *Apposals*, (*i. e.*) because the Sheriff was then to *Apponere*, or place his *Items* to account, and the Sheriff before such Appoſal did *Tot*, *Nichil*, and *O' ni'*, according as the Case required.

This

This Officer was called the foreign Appoſer, becauſe the Account on which he ſat was called the foreign Account; for the Account of the certain Revenue was the original Juriſdiction of the Court of *Exchequer*, and belonged to that Court, from the Original ſent from *Chancery* into that Court; but the caſual Revenue did not ariſe out of ſuch Originals, but was ſent into the *Exchequer* by Eſtreats out of other Courts, and therefore was called the foreign Revenue.

If any Lords of Leets or Liberties claim any Fines and Amerciaments, they are to appear before the *foreign Appoſer*, at the Time when the Sheriff is appoſed, and there they muſt claim ſuch Fines and Amerciaments as belong to them; and if their Claim be allowed, ſuch Fine is ſet off to the Claimer.

CHAP.

CHAP. IX.

We come now to the Receipt of the Exchequer.

WHEN any Man pays in Money into the *Exchequer*, he pays the Sum to the Teller, and the Teller makes a Bill in Parchment for the Sum so paid, in which is the Christian and Sirname of the Party, his Office, and the Day of Payment, and the Sum so paid wrote in Numeral Letters; this Bill is rolled up and thrown down through a Pipe into the Tally Court; then the Tally Cutter prepares the Tally, which is notched according to the Sum mentioned in the Bill, *viz.* a greater Notch for (*M.*) and a lesser Notch for (*C.*) a lesser Notch for (*X.*) and so a lesser Notch for single Pounds, and for Shillings and Pence; the

the Tally is but slightly cut with the Knife.

Then the Auditor of the Receipt, who was anciently called the *Receptor talliar'*, writes a Duplicate upon the Wood of the Tally, of the Contents of the Parchment Bill, and the Sum (which is writ in the Numeral Letters upon the Bill, and is expressed by Notches on the Tally.) Then the Clerk of the Pells enters the Bill into his Book, and the *Scriptor talliar'* reads the Tally; the Clerk of the Pells at the same Time looking into his Book, to see that his Entry and the Tally agree together; and then the Chamberlains strike the Tally, that is, divide it into two, and the Tally or the Stock is given to the Party, and the Foil or Counter-part is left with the Chamberlains, and the Bill is carried away and filed by the Auditor of the Receipt.

In this Manner of Accounting there are several Things to be observed; First, that the superior *Exchequer*, which charges

charges the Accountant, is perfectly diſtinct from the inferior *Exchequer*, where the Money is paid in, by which he is to be diſcharged; and the Reaſon of this is, that there may be no Colluſion to charge or diſcharge the Accountant for leſs than what is due; for if he were to *tott* at the ſame Place where he pays, there might be a Colluſion with the Accountant; therefore when he pays in at the Teller's Office, the Teller makes out a Bill, as a Warrant for the Accountant's Tally; and the Teller ſits apart from the Tally Court, becauſe the Tally is to be charged upon the Teller for the Money; and therefore it is, that the Auditor takes away the Bill with him in Order to charge the Teller; and the Chamberlain takes away the Foil or Counter-Talley, in Order to check the Diſcharge of the Accountant; for the Accountant muſt come to the Chamberlain's Office, and get his Tally joined, and that is markt by punching, and ſent up by a Meſſenger into the

the Pipe, and is there kept by the Pipe, as a Voucher for them, to allow the ſame in Diſcharge of the Accountant; ſo that as the Tally, and Counter-tally, check the Diſcharge of the Accountant before the Account is made up; ſo they are Vouchers to the Pipe, in allowing that Diſcharge to the Accountant.

Money was never iſſued on the Great or Privy Seal; and anciently there were no Writs of *Liberate* for the Payment of Money on any Debt due from the Crown, or any Grants made of any Sums; but afterwards they were wont to grant Patents or Privy Seals to the Treaſurer, giving him Authority to iſſue Warrants for the Money.

The Writs were anciently directed to the Treaſurer and Chancellor; and therefore the Warrants are at preſent ſigned by the Treaſurer and Chancellor, and mention the Authority of the Broad Seal, by which he iſſues them.

These are entred and recorded by the Auditor, and he draws his Bill upon the Teller; then these are entred in the Office of the Pells on the *Pellis exitus*, and go from thence to the Teller, where the Money is paid.

CHAP. X.

We come now to the Sheriff's Accounts.

Of the Antiquity and Dignity of Sheriffs. See Præf. ad 3 Co. 4 Co. 33. 5 Co. 92.

THE Sheriff is the King's Bailiff of his County, and there were several Farms of the County that were under the particular Care of the Sheriff, (as is herein before mentioned) that is to say all those Farms that were held of the King as of his County; these were under the Survey of the Sheriff, and he was charged with them, being obliged to answer them in all Events; and for them he pays in

The Manner of his Charge and Discharge. 3 Co. 72. 4 Co. 33. 9 Co. 97.

in his Profers, becauſe they were reckoned Part of his Bailywick.

The Lands of the Tenants *in Capite*, if they held by Knight's Service, generally ſpeaking, anſwered no Rent; but the Eſcuage, when it was aſſeſſed, was gathered by the Sheriff, unleſs where the particular Lords paid in their Eſcuage, and had a Commiſſion for gathering it on their Tenants.

As to the Tenants in Ancient Demeſne, and Socage Tenants, they generally paid in their Rents themſelves, as being immediate Farmers, and accountable to the King; and if they were in Arrear, it ſeems that the King's Remembrancer iſſued the *Diſtringas* againſt them, and further Proceſs, becauſe they were immediate Accountants to the King.

If any Body held Lands of the King as *de honore* of any particular Place of the King's, the Lord of that Honour or Manor gathered the Rents, and accounted for them in the *Exchequer*.

If any of the Lands within the County *eſcheated*, anciently the *Eſcheator*, till reſtrained by the Statute, might hold an Inquiſition *virtute Officii*, and thereby enter into the Lands, and as we have ſaid, was charged with the Profits of them.

See 1 Co. 42. 5 Co. 57.

But either the Sheriff or Eſcheator might give Information in *Chancery*, and take Inquiſitions *virtute Br'is*; and he, that gave firſt the Information, generally had it under his Survey, and therefore the Sheriff and Eſcheator lay upon the Watch to retain Lands, and take out ſuch Inquiſitions; but however, they held the eſcheated Lands no longer than until a Bailiff was appointed, and at the Appointment of a Bailiff, he was accountable to the Crown; and he paid in that particular Rent by Tally, and obtained a *Quietus*, in the Manner as Sheriffs and other Accountants.

The Sheriff is a Patent-Officer of the Crown, and is conſtituted the King's Bailiff to gather his Rents; and there-

therefore after the ſaid Conſtitution, the firſt Thing is to prefix him a Day to account, and there were two Days prefixed, one after the *Utas* of *Eaſter*, and the other after the *Utas* of *Michaelmas*; and theſe were called his Profers, becauſe he then did profer the King's Rents; they gave him two Times in a Year, becauſe the Rents were generally payable half-yearly. It is the Duty therefore of the Sheriff to come at the Day of Prefixion, and if he does not, he is conſidered as an Accountant in Default, and therefore a Fine of 5 *l. per Diem* is ſet upon his Head for four Days together to bring him in; and if he do not come in at the End of the fourth Day, then an Attachment *ſi. fac'* and *Cap. in manus nomine diſtrictionis* iſſues againſt his Body, Lands and Goods, and theſe iſſue to the Marſhal of the Court, in order to bring him in; but what Goods are taken, or what Profits of Lands are ſeized, are forfeited to the King till he comes

in to account, and do not go in Discharge of his Debt, but are Pains to make him account, and must be compounded by the Sheriff.

The Reason of this Proceeding is, because the Prefixion of a Day is in Nature of a Summons for him then to appear, and when he is proclaimed upon Pain for four Days after, which are in Nature of Days of Grace, then he is presumed to have the King's Money in his Hands, and to have gone off with it, and therefore all the Process is to be made against him, as against an Accountant that had been summoned.

They give Security to answer their Profers, and all other the Profits of the Sheriffwicks, before their Patents are made out, but they do not sue the Security, unless there is a Deficiency in the Sheriff's Effects. If the Sheriff keeps his Day of Prefixion, he is then to pay in his Profers, and to be apposed before the Barons, on the Writs that issue from the King's Treasurer's Remem-

Remembrancer to get in the King's Debts; and upon the Prefixion at *Michaelmas*, he is charged before the Curſitor Baron on the Summons of the Pipe, for all the Farms that belong to his County; and theſe were called *Vicontiel* Rents, or the *Corp' Comitat'*, or the *proficua Comitat'*; but the Clerk, to ſave the Expence of Time and Pains, inſtead of writing ſeveral little Rents in Charge, writ a groſs Sum *de Corp' Comitat'* 100*l.* & *de numero Comit'* 50*l.* as is herein before-mentioned, ſo that there was one Sum charged upon him, and the Sheriff accounted for the particular Rents, that made it up, by a Roll which he kept in his Cuſtody; the Rents which were to be accounted *numero*, were anciently reſerved in Fine Silver, and therefore they gave ſo much more in Tail, *viz. in Com' Bed. & Buck.* 13 *E.* 3. *Nic' paſſe len' de* 18l. 4s. 4d. *Numero pro* 17s. 7d. *Blanc*, *Hale* 29. and this Negligence in the

Clerk was the Loſs of many Rents to the Crown; but in *Norfolk*, where the Rents were greater, they wrote the particular *Vicontiel* Rents in Charge, and ſo they remain on the Pipe-Roll to this Day.

The Sheriff pays in Profers to the Value of the County Rents, becauſe theſe he muſt *tot* or *O' ni'* before the Curſitor Baron, and he cannot here *Nichil*, becauſe the Lands might be ſeized into the King's Hands, and out of the Profits and Iſſues the Rent might be anſwered, and the Sheriff is looked upon to farm the Rents, and therefore is obliged to pay them into the Crown, but he may *O' ni'* theſe Rents; for if the King grants any of them, he may ſhew the Record in his Diſcharge; and all theſe Rents being within the Survey of the Sheriff, he muſt acquit them below on Receipt of the Rents, for the Sheriff as Farmer of the County was anſwerable for them.

As

As to the Sheriff's *Discharge*, first he may discharge himself by an *O'ni'* (*i. e.*) by Order of Court upon any particular Article, or by shewing the King's Great or Privy Seal, discharging it out of the Account. *See* 3 Co. 72. 4 Co. 33. 9 Co. 97.

F I N I S.

AN INDEX.

A.

Attorney

B.

Baronies

C.

Clergy

County

D.

E.

F.

G.

K.

L.

M.

N.

O.

P.

Q.

R.

Rolls

S.

T.

V.

W.

FINIS.